

SAN FRANCISCO PUBLIC LIBRARY



3 1223 06835 4886



San Francisco Public Library

GOVERNMENT INFORMATION CENTER
SAN FRANCISCO PUBLIC LIBRARY
100 LARKIN STREET
SAN FRANCISCO, CA 94102

REFERENCE BOOK

Not to be taken from the Library



7

HEARING
SENATE RULES COMMITTEE
STATE OF CALIFORNIA



DOCUMENTS DEPT.

APP 21 2008
SAN FRANCISCO
PUBLIC LIBRARY

STATE CAPITOL
ROOM 112
SACRAMENTO, CALIFORNIA

WEDNESDAY, FEBRUARY 27, 2008
1:40 P.M.

1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

3

4

5

6 HEARING

7

8

9

10 STATE CAPITOL

11 ROOM 112

12 SACRAMENTO, CALIFORNIA

13

14

15 WEDNESDAY, FEBRUARY 27, 2008

16 1:40 P.M.

17

18

19

20

21

22

23

24 Reported by:

25

26 Evelyn J. Mizak
27 Shorthand Reporter

28



APPEARANCES

MEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR ROY ASHBURN, Vice Chair

SENATOR GIL CEDILLO

SENATOR ROBERT DUTTON

SENATOR ALEX PADILLA

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Appointments Consultant

BILL BATLEY Consultant to SENATOR ASHBURN

DAN SAVAGE Consultant to SENATOR CEDILLO

SUBS BURNS Consultant to SENATOR BUTTERFIELD

BILL MARIE - Senator from SENATOR RABALA

ALSO PRESENT

ELAINE D. BUSH, Chief Deputy Director

Mental Health Department

DONNE BROWNSEY

BONNE BROWNSET
California Opioid Maintenance Providers

DON KINGDON

DON KINGDON
California Mental Health Directors Association

DALE E. BONNER / *Sagittarius*

DALE E. BONNER, Secretary
Transportation and Housing Agency

TONI MARINA - 2008

JON HAMM, CEO
Mad Men, *The Night Manager*, *Silicon Valley*, *Billions*

DAN KYSOR
The University of Texas at Austin

PAT MCPARTLAND
Association of California State Employees with Disabilities



1 LAURA WILLIAMS, President
2 Californians for Disability Rights, Inc.

3 BETH CAPELL
4 Health Access California

5 ELIZABETH LANDSBERG
6 Western Center on Law and Poverty

7 RICHARD SKAFF, Executive Director
8 Designing Accessible Communities

9
10 TERELLE TERRY
11 Gray Panthers

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



INDEX

2		Page
3	Proceedings	1
4	<u>Governor's Appointees:</u>	
5	ELAINE D. BUSH, Chief Deputy Director	
6	Department of Mental Health	1
7	Opening Statement	1
8	Questions by CHAIRMAN PERATA re:	
9	Cost of Jessica's Law	3
10	Unfunded State Mandate	4
11	Bipartisan Support for Mental Health	
12	Issues	5
13	<u>Witnesses in Support:</u>	
14	DONNE BROWNSEY	
15	California Opioid Maintenance Providers	5
16	DON KINGDON	
17	California Mental Health Directors Association	6
18	Motion to Confirm	7
19	Committee Action	7
20	DALE E. BONNER, Secretary	
21	Business, Transportation and Housing Agency	7
22	Opening Statement	8
23	Questions by SENATOR PADILLA re:	
24	Fines Imposed on Blue Cross	11
25	Sufficiency of Fines Levied on	
26	Health Care Plans in Deterring	
27	Future Violations	12
28		



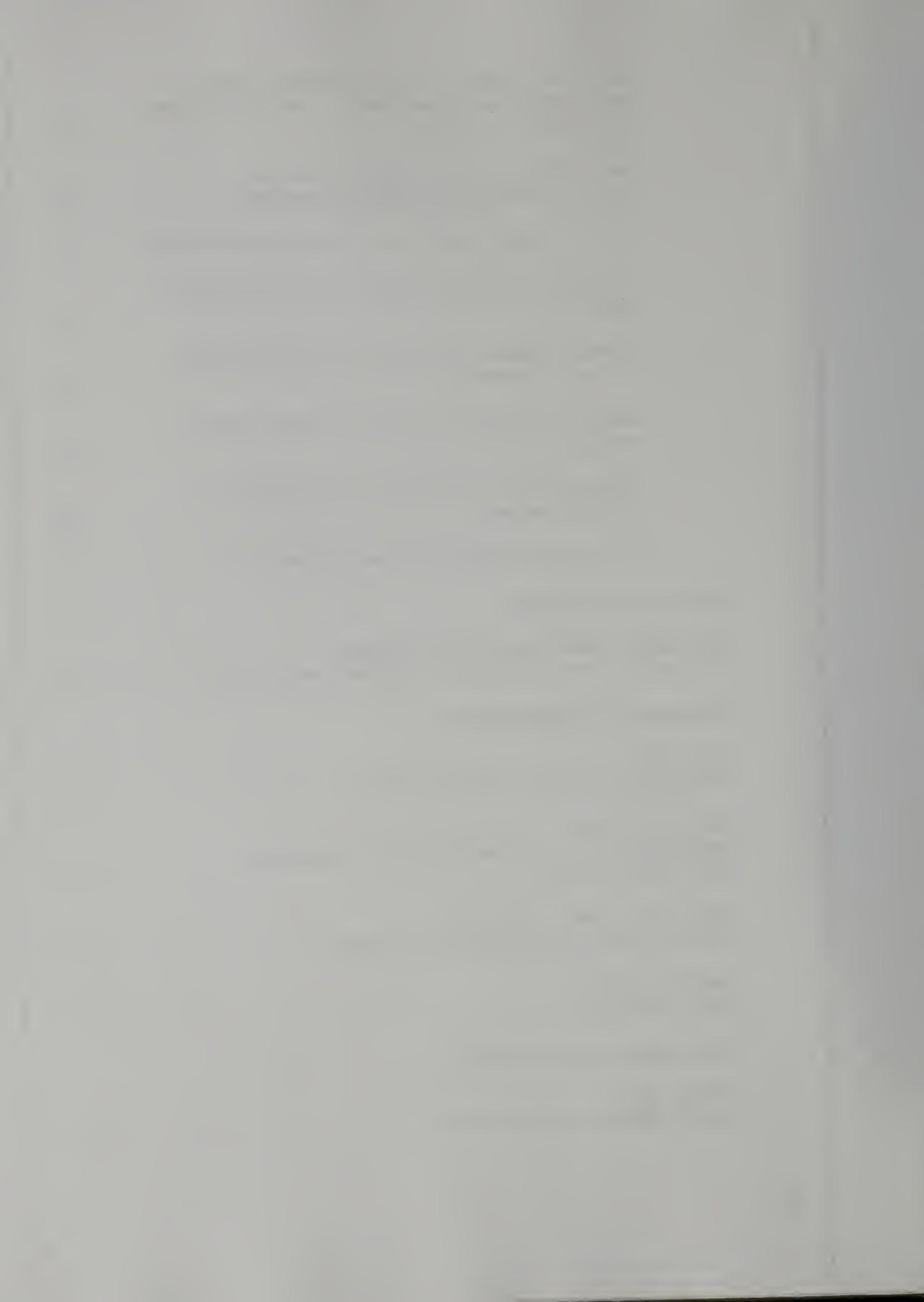
1	Fine Monies Go into Managed Care Fund	13
2	Means by Which Department Becomes Aware of Potential Violations by Health Care Plans	14
3	Need for Department to Be More Proactive	15
4	Status of Draft Regulations to Address Illegal Cancellation of Policies	16
5	Requirements of Timely Access to Health Care	17
6	Language Access Compliance by HMOs	19
7	Public's Right to Know about Their Rights as Patients	20
8	Questions by SENATOR DUTTON re:	
9	Specific Economic Growth Plans	20
10	Function regarding Lending and Mortgage Industries	23
11	Compliment on Town Hall Meeting Held in Riverside on Mortgages and Foreclosures	25
12	Feelings on Implementation and Funding of Proposition 1B Funds	26
13	Questions by SENATOR ASHBURN re:	
14	Appropriateness of the HMO's Letters to Physicians	29
15	Reason for Not Seeing or Reviewing the Letter	29
16	Department of Managed Health Care's Approval of Letter Two Years Ago	30



1	Instructions to Director of Department of Managed Health Care regarding Investigation ...	32
2	Management Style in Question	32
3	Steps Taken to Expedite Delivery of Projects by Caltrans and Other Departments	34
4	Need for Department of Innovation	36
5	Future of Office of Military and Aerospace	36
6	Questions by SENATOR CEDILLO re:	
7	Status of REAL ID	39
8	When Will Request Come to Legislature for Implementation of REAL ID in California	41
9	Plans in Place to Execute Plan with High Levels of Participation	42
10	Preparations to Comply with REAL ID	43
11	RFP regarding Second Tiered License under REAL ID	45
12	Anticipated Impacts Should California not Comply with REAL ID	46
13	Policy of Department of Managed Health Care regarding Patient Dumping	48
14	Questions by CHAIRMAN PERATA re:	
15	Status of Caltrans Lawsuit regarding ADA Compliance	50
16	State's Contention in Defense	51
17	Possibility of Using 1B Funds	54
18	Caltrans' Compliance with ADA Should Be Priority	55
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		



1	Ease with which Civil Servants Impose Their Will on Departments, regardless of Legislative Intent	55
3	Appreciation for Intercession on 1C and Affordable Housing Program	56
4	Caltrans and Public-Private Partnerships	57
6	Thoughts on Grade Separation and Inland Empire	60
7	Former Member of California Performance Review Commission	62
9	Need for Sharper Focus at Department of Managed Health Care	63
11	Possibility of Shifting Department to Another Agency	64
13	Big Fines Needed to Grab Attention	67
14	<u>Witness in Support:</u>	
15	JON HAMM, Chief Executive Officer California Association of Highway Patrolmen	68
17	<u>Witnesses in Opposition:</u>	
18	DAN KYSOR California Council of the Blind	70
20	PAT MCPARTLAND Association of California State Employees with Disabilities	71
22	LAURA WILLIAMS, President Californians for Disability Rights	74
24	TERELLE TERRY Gray Panthers	84
25	<u>Witnesses with Concerns:</u>	
27	BETH CAPELL Health Access California	76



1	ELIZABETH LANDSERG Western Center on Law and Poverty	80
2	RICHARD SKAFF, Chief Executive Officer Designing Accessible Communities	80
3		
4	Statements by CHAIRMAN PERATA re:	
5	Effect of Caltrans Lawsuit on Disabled Community	86
6		
7	Responses by MR. BONNER	87
8		
9	Questions by CHAIRMAN PERATA re:	
10	Reason for Filing Lawsuit	88
11		
12	Nature of Defense	89
13		
14	Underlying Merits of Case	89
15		
16	Need for Assurance that Issue Will Receive Attention and Be Resolved	90
17		
18	Comments by PAT McPARTLAND	93
19		
20	Motion to Confirm	94
21		
22	Statements by SENATOR CEDILLO re:	
23	Procedural Question Used to Delay or Defer Disability Access	94
24		
25	Need to Comply with Law	95
26		
27	Language Access and Health Care	95
28		
	Committee Action	97
23	Termination of Proceedings	97
24		
25	Certificate of Reporter	98
26		
27		
28		



2 Written Responses to Committee Questions
3 By Appointees, as well as Written
4 Statements by Appointees Not Required to
5 Appear: Members of the California
6 Exposition and State Fair Board of
7 Directors: GILBERT A. ALBIANI and
8 CORNELIUS L. GALLAGHER; Members of the
9 California Housing Partnership Corporation
10 Board of Directors: JONATHAN EMAMI and
11 RONALD J. GARCIA

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28



3 CHAIRMAN PERATA: We're going to take the two
4 appointees here today out of order.

5 Elaine Bush, if you'd come forward, we'll hear
6 that first.

7 Welcome.

8 MS. BUSH: Thank you.

9 CHAIRMAN PERATA: How are you?

10 MS. BUSH: Great, thank you --

11 CHAIRMAN PERATA: You may open, tell us whatever
12 you'd like in 30 seconds.

13 [Laughter.]

14 MS. BUSH: I timed it. It's going to be like 57.

15 Good afternoon. Thank you, Chairman Perata and
16 Members. It's an honor to seek your confirmation here today as
17 the Chief Deputy Director for the Department of Mental Health.

18 I've been a public servant in state government
19 for over 23 years, half of the time I've served as a chief
20 deputy director. My departmental experience includes: Social
21 Services, Developmental Services, Alcohol and Drug Programs,
22 Insurance, and now Mental Health.

23 In addition, I was the Chief Executive Officer of
24 the California Earthquake Authority for almost five years before
25 taking this position.

26 As most of you probably know, the Department of
27 Mental Health has been presented with many opportunities and
challenges over the last several years. The passage of the

1 Mental Health Services Act, which people call Proposition 63, is
2 now bringing in over \$1.5 billion a year. And it demands that
3 the Department have an infrastructure which can allocate, track,
4 and be accountable for this revenue, and just as importantly, be
5 able to answer my favorite question: Did people who were in
6 need of mental health services get them, and how effective were
7 those services?

8 Jessica's Law, Proposition 83, passed a little
9 over a year ago, and it has increased our referrals from
10 Corrections ten-fold. We go from -- we went -- we used to have
11 50 referrals a month, and we're now up to 500 referrals a month
12 from CDCR. All of these cases require the Department review, a
13 system to track the cases throughout the entire process, from
14 intake to possible commitment to one of our state hospitals. We
15 need to be able to tell the public the impact of this
16 proposition.

17 Our program for Medi-Cal eligible kids, known as
18 EPSDT, has grown five-fold, from 200 million to more than a
19 billion dollar program. The accounting and claims systems
20 developed many years ago were never scaled to handle the
21 magnitude of claims that are entering the system today. This
22 has caused delays in payments to counties and to providers. We
23 are re-engineering our systems as I speak to function like any
24 other \$5 billion business and pay our bills accurately and on
25 time.

26 In addition, we're setting up a unit in the
27 Department of Mental Health for counties to call in if they have
28 payment questions.

1 And finally, the Department is making major
2 reforms in our state hospitals in response to a consent judgment
3 with the U.S. Department of Justice. The judgment requires that
4 we move from a change problem deficit, more medical model
5 approach, to one that supports the individuals in a positive
6 manner and teaches them the necessary life skills to integrate
7 back into their communities.

8 This shift has not only impacted the way our over
9 10,000 state hospital employees have to think about treatment,
10 but has demanded technology infrastructure be developed to track
11 the treatment plans and the progress of each of our patients.
12 To address these demands, and many others, we have spent the
13 past seven months conducting many baseline assessments of the
14 existing system at headquarters and at the hospitals, and we now
15 have a road map with tangible actions that I believe will move
16 the entire system forward.

17 2008 is a year where we're beginning to see great
18 progress in the development of our infrastructure, from the
19 staff to the systems, to the enhanced delivery of services to
20 our nearly 700,000 mental health clients.

21 As Chief Deputy, my goal is to have an efficient,
22 accountable, and transparent department, a department that gets
23 rebuilt in collaboration with our partners -- the counties,
24 providers, and other state agencies.

25 Thank you for your consideration.

26 CHAIRMAN PERATA: Thank you.

27 On the Jessica's Law, that's a staggering number.
28 What does that cost to do 500, roughly?

1 MS. BUSH: The staffing and the evaluators,
2 between the two, are about \$33 million a year.

3 CHAIRMAN PERATA: And there was no funding
4 source. That just comes out, and your budget has to expand
5 based upon that?

6 MS. BUSH: We did get an appropriation for the
7 staffing and for the evaluations.

8 CHAIRMAN PERATA: But that was not --

9 MS. BUSH: State General Fund, that's correct.

10 CHAIRMAN PERATA: So, we keep adding things, but
11 we don't find any money to pay for them.

12 MS. BUSH: The budget accounted for the
13 evaluations and for the staffing, so we did get an appropriation
14 for that.

15 CHAIRMAN PERATA: It's effectively an unfunded
16 mandate on the state. I'm just talking out loud here, not that
17 it's not important.

18 Well, I was impressed that you've dedicated your
19 young life to this to the state. You've done many different
20 things.

21 I'm pleased to have an administrator in a
22 position as opposed to someone who's an expert in the discipline
23 of the department. But it's Dr. Mayberg, then it's you, but
24 it's going to really be you that's going to resolve a lot of
25 these administrative issues.

26 I not only wish you well, but since there's been
27 a series of criticisms of the Department that are laid at the
28 feet of the administration, solving these problems will be

1 important.

2 And I can just assure you that there are many
3 people in the Senate who have more than a passing interest in
4 mental health issues, and you'll find a lot of support, and
5 bipartisan support. You know, mental illness is not something
6 that stops at the party line.

7 MS. BUSH: That's right.

8 CHAIRMAN PERATA: So, I would really encourage
9 you to engage with us. We are the ones that hear about the
10 problems. We don't have to have an auditor come in and tell us
11 that something's screwed up. We find out ahead of them.

12 So, I'm delighted that you're here.

13 Does anybody have any questions?

14 Anybody here in support? Good.

15 MS. BUSH: Thank you, Senator Perata.

16 CHAIRMAN PERATA: You stay where you are. I
17 actually would face them, but they're in support.

18 MS. BUSH: I actually was thanking you for your
19 comments. Thank you. I appreciate them.

20 MS. BROWNSEY: Good afternoon, Mr. Chairman,
21 Members.

22 My name is Donne Brownsey. I'm here representing
23 the California Opioid Maintenance Providers.

24 We worked with Ms. Bush when she was the Chief
25 Deputy Director at Alcohol and Drug. Truly, I don't think you
26 can find anyone in state government who's a better problem
27 solver, and who works with her provider organizations in a way
28 that's really focused on trying to identify what the problem is,

1 and moving towards a solution that works not only for the people
2 who administer the programs out in the field, but also works for
3 the state. We just had a great relationship with her.

4 She's a professional. She's hard working. She
5 has a great sense of humor, and she never forgets that she's
6 really here to serve the people of the State of California.

7 So, we give her absolutely our highest
8 recommendation to you. Thank you.

9 CHAIRMAN PERATA: Thank you.

10 MR. KINGDON: Mr. Chair and Members, Don Kingdon,
11 California Mental Health Directors Association.

12 We too are here in support. Ms. Bush represents
13 from our perspective a breath of fresh air. She does seem to
14 understand the critical role that the counties play in
15 delivering mental health services. She's refreshingly direct
16 and honest communicator and results only -- and a results
17 oriented person.

18 We do need to take this opportunity, though, to
19 echo the concerns of the Chair and raise our very serious
20 concerns about the problems that Ms. Bush has inherited at the
21 Department, and that we need both talk and action at this point,
22 and support her in that vein and hope that she can bring that to
23 the Department.

24 Thank you very much.

25 CHAIRMAN PERATA: Thank you.

26 Anybody here in opposition?

27 Do you have any family here?

28 MS. BUSH: No, I don't.

1 SENATOR ASHBURN: Motion.

2 CHAIRMAN PERATA: We have a motion to approve.

3 Call the roll, please.

4 SECRETARY WEBB: Cedillo.

5 SENATOR CEDILLO: Aye.

6 SECRETARY WEBB: Cedillo Aye. Dutton. Padilla.

7 SENATOR PADILLA: Aye.

8 SECRETARY WEBB: Padilla Aye. Ashburn.

9 SENATOR ASHBURN: Aye.

10 SECRETARY WEBB: Ashburn Aye. Perata.

11 CHAIRMAN PERATA: Aye.

12 SECRETARY WEBB: Perata Aye.

13 SENATOR DUTTON: Dutton Aye.

14 SECRETARY WEBB: Dutton Aye. Five to zero.

15 CHAIRMAN PERATA: Five-zero, congratulations.

16 MS. BUSH: Thank you.

17 CHAIRMAN PERATA: Look forward to hearing from
18 you.

19 MS. BUSH: Thank you very much.

20 CHAIRMAN PERATA: We're going to take a two-hour
21 break.

22 [Laughter.]

23 CHAIRMAN PERATA: Mr. Bonner.

24 Is that what you did at Georgetown, you sat in
25 the back?

26 MR. BONNER: That way you can see everything.

27 CHAIRMAN PERATA: There you go. You're a lawyer,
28 got an answer for everything.

1 [Laughter.]

2 CHAIRMAN PERATA: Welcome.

3 MR. BONNER: Thank you very much.

4 CHAIRMAN PERATA: You may open.

5 MR. BONNER: I'll be very brief.

6 First, I wanted to thank the Chair and the
7 Members of the Committee and your staff for spending a little
8 time with me this afternoon.

9 Also, I've appreciated the opportunity to get to
10 know you throughout the year. You know, running an agency like
11 BT&H, with a number of very high profile departments, it's very
12 difficult to not be over here occasionally on various issues.
13 So, I certainly have appreciated that opportunity.

14 I needed to start out also with a couple of words
15 of thanks. I wanted to thank the Governor for offering me the
16 opportunity to serve the people in this capacity.

17 I wanted to thank my family and friends for their
18 encouragement and support throughout the year. In particular, I
19 wanted to thank a gentleman here with me today, my long-term
20 friend and mentor, Gabe Escolera, who has known me most of my
21 life and has been the one who has encouraged me --

22 CHAIRMAN PERATA: Welcome.

23 MR. BONNER: -- and coaxed me into putting my
24 leadership talents to work for -- in public service. I
25 appreciate him making the effort to be here today.

26 And lastly, I wanted to thank my staff. I have a
27 great staff at the Agency that basically keeps me together and
28 on the move. And so, I appreciate all that they have done.

I wanted to just point out that, as many of you know, I have been at this Agency before, some years ago, in a Deputy Secretary and General Counsel capacity.

When I went back to the private sector and thought that I was done with government service, at least for some time, and really looked forward then to the opportunity to come back, because I think I'm here at a time when the Agency has a real opportunity to realize its basic promise, and that is to facilitate economic development and jobs growth, and to do it with integrated transportation and housing policy and planning. And so, I know it's been kind of the intent of the Agency over the years, but it's something that we're doing now more than ever with the passage of the Prop. 1B Transportation Bonds and 1C Housing Bonds in particular. And then more recently, the Legislature passed AB 1721 last year which gave us the primary charge for facilitating economic development throughout the state. And so, it's been a tremendous opportunity to be here at this particular point in time.

Just a couple of notes. We have made tremendous progress this year in implementing the housing and transportation bonds. And on the transportation side in particular, we'll have almost \$10 billion of those of the \$19.9 billion programmed this year.

And I know you have offered to help with the administration in getting those dollars put to work as quickly as possible, and we appreciate that.

We are what I consider to be completing our evolution of "B" in BT&H, which means that historically we have

1 been -- the "B" has been primarily a regulatory oversight
2 function. And we are continuing to evolve into an economic
3 development function more aggressively as well. And so, I look
4 forward to talking about that as well.

5 And of course, we are trying very hard to improve
6 the oversight and effectiveness of our departments and all of
7 our programs. And we've done this by shifting additional or
8 existing resources to just focus some of our staff, and I'll
9 talk about that a little bit later in response to some
10 questions. And we've done this throughout the -- the year,
11 while at the same time addressing some of the major crises in a
12 very effective way.

13 Just a couple weeks after I came on board, we had
14 the -- the melt-down at the MacArthur Maze in your part of the
15 state, and we were very proud to get that facility opened after
16 just 26 days. Then we had the I-5 tunnel crash and fire down
17 south and were able to get that back in operation in just 34
18 days. And of course, we had the wildfires and a number of other
19 things throughout the year, and the mortgage crisis. So,
20 there's been no shortage of high priority projects to be working
21 on.

22 Lastly, I want to say one thing that I'm very
23 proud of is that we have done a lot of work this year in trying
24 to improve our stakeholder relationships, which has been
25 particularly important in light of the bond programs, a lot of
26 negotiation, collaboration, that's involved there. And we have
27 been able to build a number of relationships with some
28 stakeholder groups that traditionally have not been our

1 traditional stakeholders, namely in the environmental community.

2 So, I mention that because we do have two groups
3 who I know -- I expect we'll hear from today who represent
4 stakeholder groups that I have not had an opportunity to work
5 with directly. I mean, they have been very close to some of our
6 programs, but I have not had the opportunity until very recently
7 to work directly with them.

8 But my pledge is that we will be working just as
9 hard to build those relationships and address their issues as we
10 have with all of the others. And so, I know we're going to talk
11 about a number of their issues, but I just wanted to make sure
12 that I -- that I acknowledge their presence here today and make
13 that broad commitment.

14 And with that, I'll be happy to answer any
15 specific questions that you may have.

16 CHAIRMAN PERATA: All right.

17 Alex, you want to start?

18 SENATOR PADILLA: Good afternoon.

19 MR. BONNER: Hello, sir.

20 SENATOR PADILLA: I appreciate the opportunity we
21 had several days ago to meet.

22 I think one of the questions I asked you that
23 day, and I have a series of questions today in regards to what's
24 happening in the Department of Managed Health Care continues to
25 evolve. So, I just wanted to share a little bit of history in
26 particular on the Blue Cross case in Committee today and ask a
27 few questions sort of more in general.

28 From my notes, Blue Cross of California was fined

1 \$200,000 in 2006 for rescinding the coverage of one of its
2 members. And in 2007, it was fined a million dollars for
3 routinely rescinding policies. And more recently, we read that
4 Blue Cross is continuing to operate sort of with the same
5 endeavors, asking doctors to disclose pre-existing conditions
6 that could be used to cancel a new patient's coverage.

7 So, as Secretary overseeing the Department, do
8 you believe that the level of fines imposed on health care plans
9 have been sufficient to deter such violations?

10 MR. BONNER: I don't think that -- or, I'm not
11 yet convinced that -- that they've been sufficient to achieve
12 the level of deterrence that you want to see. I mean, the fact
13 that we're continuing to see the problems, not just generally
14 but as you're pointing out, even with the single plan that is --
15 that has had a number of problems.

16 And so, I don't think that we are at that point
17 where the -- at least all the players in the industry have
18 gotten the message on that particular issue.

19 I would note that, as you're pointing out, in
20 2006, I think the Department issued about a little over \$3
21 million in fines. In the year that I was here in 2007, that was
22 up to about 5-1/2 million almost. And just this far into '08, I
23 think we're all ready at over 3 million.

24 You know, and on -- and some of those involve
25 different issues, but I think the point is that -- that what you
26 are trying to do is make sure that you always send the strongest
27 message as you can to the industry.

28 SENATOR PADILLA: If that wasn't enough, one of

1 the things that bothers me is, and tell me if this is
2 inaccurate, but the fine money that's collected goes back into
3 lowering the fees that health plans pay to the Department?

4 MR. BONNER: You know, I'm not aware that that's
5 the case. I think when you put it that way, I think the issue
6 is it goes back into the Managed Care fund, which is the same
7 fund that plans pay into in their assessments.

8 And you know, I will -- I'm going on a limb a
9 little bit. My recollection from some years ago was, there was
10 some discussion about the merits of -- you don't want to have a
11 situation where a regulatory agency is incentivized to fund
12 their operations based on fines so that you have that improper
13 incentive.

14 It's my hope that that's not the effect of -- I
15 don't claim -- I don't profess to know, but I'm just saying I
16 would hope that's not the net effect.

17 SENATOR PADILLA: I can appreciate that comment,
18 that you don't want to over incentivize the Department to go
19 after fines. I'm not sure I completely agree with that.

20 But by the same token, if there's any sort of
21 off-setting of obligations from providers to pay into the fund,
22 if they experience some sort of relief by the fact that they've
23 paid a fine, and so there's money going into the fund, and so
24 therefore, what they would normally pay would sort of relieve
25 them a little bit.

26 It takes a whole lot of teeth away of
27 enforcement, in my mind, for the deterrence factor in my mind,
28 if they're happy to violate the policy to try to make more money

1 or save money, and if they're busted, they have to pay a fine,
2 but the fine is just the cost of doing business anyway because
3 it'll be made up on their annual fees anyway. That just doesn't
4 make a whole lot of sense to me.

5 MR. BONNER: Yeah, and I would say on the
6 surface, I would agree with you if that is, in fact, the case.
7 I don't know all the particulars to say whether that is the
8 case.

9 If it is, I would agree with you that it would be
10 a very troubling scenario.

11 SENATOR PADILLA: Otherwise, I'm happy to have my
12 traffic violations be accredited towards my vehicle license fee.

13 [Laughter.]

14 MR. BONNER: If you have any. I would be
15 surprised if you had any.

16 SENATOR PADILLA: I'd have to go back a few
17 years.

18 How is the Department made aware of potential
19 violations by health plans? How proactive are we in
20 investigating or looking, or are we simply sort of complaint
21 driven in investigations, or press driven in investigations?

22 MR. BONNER: Yeah, all of the above.

23 There's really three or four ways. The main way,
24 one, is in the licensing function. So when -- plans are
25 required to file regularly extensive volumes of -- of paper
26 before they do certain kinds of things. And so, in the process
27 of licensing, that's one area.

28 Secondly, in the medical survey process, which is

1 on a statutory timeframe, both on the accounting side and also
2 the medical quality of care side, you see violations when you --
3 when they come up in that -- in that context.

4 Third, you do have consumer complaints, and
5 obviously media stories, and things of that nature.

6 To your real point, I think, about whether the
7 Department is sufficiently proactive, I don't think that they
8 are, and in part because one of the problems that I think you
9 see, and it's something that we're working on this year is, I
10 think they can do a better job of stepping back and
11 understanding not just the -- all of the list of things they're
12 required by law to look at on kind of a methodical basis, but to
13 also be troubleshooting and understanding where the market is,
14 where it's going, and -- and being a little more proactive in
15 saying, "Hey, we need to go out and do some investigating," or
16 gather some information to understand that there's a problem
17 going on in certain areas.

18 SENATOR PADILLA: So, do you have a game plan for
19 being more proactive so we can sort of discover problems before
20 we read about it in the Capitol Weekly?

21 MR. BONNER: Yes. You know, the main thing that
22 I'm doing right now, and I think when I was here some ten years
23 ago, and I was the -- I administered the Knox-Keene program as
24 the Commissioner of Corporations. And one of the problems that
25 the Legislature had at that time was that -- that you really
26 didn't have enough focus on all the types of issues that were
27 going on. And that was kind of the genesis of the Department of
28 Managed Health Care.

1 And I've kind of followed that general approach
2 in doing -- for the first time separating out. You know, I have
3 a team of deputy secretaries who have various oversight. And
4 historically, you had one deputy who was overseeing the
5 Department of Managed Health Care along with three or four other
6 regulatory agencies. And so, I have pulled that function out as
7 well to have one deputy who is just two doors down from me who
8 has that direct responsibility, so that I can be -- not only we
9 can be more directly involved, but so that she can do the
10 kind of things that it's hard for even the Director to do when
11 you're overburdened with all of the day-to-day things, that you
12 can be bird dogging these issues on a little more proactive
13 basis, and giving the Department that help and setting
14 priorities. Because, you know, sometimes you have to have that
15 push from the top to say, "Hey, you need to redirect some
16 resources to do some other things."

17 And so, that's really what I have done, is to
18 make sure that we at the Agency are better able to exert the
19 kind of management and control that we need to as well.

SENATOR PADILLA: In October of last year, the Department released draft regulations to address the illegal cancellation of policies by health plans.

23 | What's the status of those?

24 MR. BONNER: The rescission regulations? You
25 know, I don't believe that that issue at this point is being
26 addressed through further regulation. In other words, there's a
27 statute on the books.

I know at one time there was an effort to try to

1 further define the standard, and I think we believe that the
2 standard is clear. That's the reason of which we've gone ahead
3 and try to be more aggressive in enforcing the statute that's on
4 the books.

5 SENATOR PADILLA: On a different topic, Senator
6 Kuehl this past week forwarded a letter to the Director of the
7 Department. In the letter she states that the proposed
8 regulations regarding timely access failed to establish
9 standards as required by law. And in fact, they allow the plans
10 themselves to establish these standards within their own
11 internal process.

12 It sounds a little permissive to me. Do you
13 think that the way we're handling it is consistent with the
14 spirit and intent of the original legislation?

15 MR. BONNER: You know, I think -- I don't think
16 that it's -- it is consistent with the spirit and intent of the
17 Knox-Keene Act itself historically. I don't think that it's
18 consistent with what the Legislature was attempting to do and
19 put a finer point.

20 In other words, the Knox-Keene Act does have this
21 kind of historical approach of --

22 SENATOR PADILLA: Just for purposes of today's
23 discussion, we also have AB 2179 by Assembly Member Cohn from a
24 couple of years ago.

25 MR. BONNER: That one I'm less familiar with.

26 But I think the point you're raising is a good
27 one. That is, the question is, the Legislature's directive was
28 to make more clear what the access guidelines are, and

1 requirements are.

2 And the current draft of those regulations take a
3 more flexible approach by deferring to the plans to propose a
4 framework, and then the Department would evaluate that to
5 determine whether it's reasonable.

6 At least as of today, in part because Senator
7 Kuehl has raised some concerns, one of the groups that's going
8 to make some comments today has also raised some questions, and
9 I have number of questions as well.

10 And so, we have committed to taking some
11 additional review of those regulations to make sure that --
12 there are problems, I should say. And I don't want to falsely
13 suggest that I think we can get as far as some of the consumer
14 groups might want in terms of being overly specific. But if it's
15 over specificity on this side, and where the regs are here, I
16 think we can get somewhere much closer to where we really should
17 be.

18 SENATOR PADILLA: Then I suggest we need to
19 familiarize ourself sooner rather than later with AB 2179, by
20 Assembly Member Cohn in 2002, which specifically requires the
21 establishment of timely access.

22 I mean, obviously, the general concern here is
23 that just like justice delayed is justice denied; health care
24 delayed is, in many cases, health care denied. As a patient's
25 condition is prolonged, it can worsen, causing in many cases
26 death. We've heard those stories. It can cause someone who
27 could be treated to end up in an emergency room, which is more
28 costly for all of us.

1 And so, I just want the Department to sort of
2 live up to its requirements and responsibilities.

3 MR. BONNER: If I could say just briefly that I
4 am familiar with 2179, the 2002 legislation. I wasn't -- I
5 thought maybe there was something more recent that you were
6 referring to. But I am -- I am familiar with the 2002
7 legislation you're referring to.

8 SENATOR PADILLA: Okay.

9 A couple questions regarding language access.
10 Senator Escutia in 2003 authored a bill that required HMOs to
11 provide access to care in the language spoken by the HMO member.

12 What's been your assessment of how providers are
13 complying with the law?

14 MR. BONNER: Very good question. My assessment
15 is that it's all over the map in reality. Some of the larger,
16 more sophisticated providers that invest money in these types of
17 areas do it for regulatory compliance, but also for their own
18 marketing purposes. Others are at the other end of the spectrum
19 and have done a more spotty job.

20 It's somewhat complicated because someone who
21 maybe has two languages or three languages in the area where
22 they are may find it easier to comply than someone in a county
23 where there's a hundred different languages.

24 But I don't agree that -- that we have enough.
25 Coherency to the -- sort of requiring the approach that we
26 really should have to make sure that not only there's a
27 standard, but that providers know what it is, and that members
28 know what it is as well.

1 SENATOR PADILLA: Exactly. Is there a systematic
2 way that we're telling the public or HMO members of their right,
3 of this specific right?

4 MR. BONNER: Well, the regulations on this, on
5 that requirement, are still in process. I don't know -- I know
6 that that is one question that has been raised, as to how do we
7 know we're doing enough make sure that people know what the
8 health plans expectations and requirements are.

9 And I just understand that to be one of the
10 issues that we're going to be looking at, because it's one that
11 I continue to hear some dissatisfaction on. And when I keep
12 hearing it, it tells me that there's some more work to do.

13 SENATOR PADILLA: Thank you.

14 CHAIRMAN PERATA: Mr. Dutton.

15 SENATOR DUTTON: Just a couple questions.

16 Your department, there's been some criticism that
17 the BTH should be more involved in the economic activities and
18 so forth. And there was actually some legislation that was
19 passed last year regarding that specifically.

20 I know you're involved in transportation. It
21 just seems like the Agency's actually involved in a lot of
22 things.

23 Do you have any kind of specific economic growth
24 plan that you're actually working on or developing at this time?
25 How are you going about dealing with the economic development of
26 the State of California?

27 MR. BONNER: Yeah, I appreciate the question.

28 Now, I would say first, I'm going to be somewhat

1 careful, because when you refer to a plan, as of course I'm not
2 -- the plan I may have is not the same as what might come from
3 the Legislature or the Governor in terms of a state economic
4 growth plan.

5 SENATOR DUTTON: I'm interested in your thoughts.

6 MR. BONNER: Sure, right.

7 So, when I refer to my plan, in other words, it's
8 a plan that reflects those things that are within our purview.
9 And it includes some of the things that -- that had come to the
10 Agency some years before: doing more to promote travel and
11 tourism, the film and entertainment industry, and those kind of
12 things.

13 But with the new responsibility, there's a couple
14 of things that we're trying to do, and I'd like to look at -- or
15 always think of the importance of focus. In other words, one of
16 the problems that we have, in my view, is we have a very
17 fragmented economic development web of agencies and
18 responsibilities. You know, the Jobs Commission, the Employment
19 Strategy Panel, the Workforce Investment Board, probably a dozen
20 or so that are kind of out there and doing various things.

21 So one thing we're doing is making sure, or we're
22 going to be making sure that they're all at least swimming in
23 the same direction, that they -- sometimes one develops a study
24 and reports that they use, but others don't use as effectively
25 as could be. So, we're doing a fair amount of that.

26 In terms of a strategy, we're putting tremendous
27 focus on small business namely because small business still --
28 small businesses still continue to constitute the overwhelming

1 majority of employers around the state.

2 And we're focusing even further on what have been
3 identified as clusters of opportunity, which means -- of course,
4 any services the state provides are going to be eligible to
5 businesses around the state, but we're focusing on in Southern
6 California, for example, the logistics in the goods movement
7 industry, which you, I'm sure, are very familiar with.

8 In the Central -- excuse me, the Silicon Valley,
9 you have the biotech industry that's really burgeoning there,
10 and also to some degree in the -- in the southern part of the
11 state, and biotech in San Diego, for example.

12 So, what we're trying to do is to make sure that
13 we are, one, more aware of what these clusters of opportunities
14 are, what kinds of assistance they need that are appropriate for
15 the state to really be providing, because we do different things
16 in economic development than some of the local agencies do.

17 But that's really the strategy, is to -- to not
18 promise everything to everyone, but to try to focus on those
19 industries that the state has identified as growing, and those
20 that are most -- that can most benefit from our support.

21 And then with regard to small businesses'
22 services, we're trying to expand the loan guarantees and those
23 kinds of programs. Some of it is bully pulpit work. One of
24 the issues that small businesses raise is the difficulty in
25 accessing capital. And so, we're going to be doing a little
26 more match making in terms of finding venture firms and other
27 private investors who want to invest in California on the one
28 hand, and trying to make sure that -- that we can help them

1 identify a small business that could use access to capital.

2 So, it's a range of things on the policy and
3 strategy front, and then you'll see a collection of actual
4 events, everything from our Board of Governors Conference, which
5 we'll do later this year. California's hosting the Bio 2008,
6 which is the largest international trade show in biotech, and
7 we'll be doing a number of other things, specific things, along
8 those lines.

9 But mainly what we're trying to do is bring some
10 focus and coherency to much of what has already gone on out
11 there.

12 SENATOR DUTTON: Okay, thank you.

13 Also, obviously we've got a real crisis going on
14 with regards to the mortgage industry and so forth.

15 I understand that the BTH does oversee certain
16 state agencies and so forth that have responsibility for the
17 regulation of that industry. And it would seem like in some
18 cases, probably mostly at the federal level, but it seems like a
19 lot of the subblending problems actually are a result of a
20 failure to regulate properly, or to at least provide protection.

21 Share with me your thoughts that you have
22 regarding your department's function, and are there things that
23 the state needs to be more aware of with regards to the lending
24 industry that we have control over?

25 MR. BONNER: Sure.

26 It's a multi-faceted problem, and I'd say the
27 effectiveness of regulation is one facet of the problem. That's
28 certainly not the only facet of the problem.

1 But you do have problems that range from real
2 estate practices, and so we have done what have probably should
3 have gone farther than what they've done in some other states,
4 which is to enact a set of regulations that actually require
5 lenders to do underwriting to verify income, and do some of
6 those things that they were not really doing before. To be a
7 little more clear and fair in disclosing the terms of certain
8 loans and things.

9 Those are things that will, of course, inure to
10 the benefit of people who are maybe getting loans in the
11 future. And our real focus right now is on those who have all
12 ready been caught up in this issue in some way now.

13 And I want to be careful to say that we're not in
14 the business of painting, you know, villains and victims, and
15 those things. What we're most concerned with is making sure
16 that, one, we are being able to get people help who are in their
17 homes and at some risk of losing their homes now.

18 The Governor has had an agreement with lenders to
19 try to freeze rates. We're doing town halls around the state to
20 help people understand what other services are available.

21 And then, we are spending a fair amount of time
22 and effort this year in -- in trying to prepare for and address
23 the looming foreclosure crisis. I mean, we've seen a record
24 number of foreclosures to date, but we haven't quite hit that
25 peak as of yet, and so that problem is going to be getting worse
26 as we get further into the year. And so, we are already working
27 with lenders and servicers and others who are involved to make
28 sure that properties get listed very quickly, that they're

1 maintained during the time that they are vacant, and that --
2 that we can try and get them turned over as quickly as possible
3 to avoid the potential of blight and other kinds of things that
4 happen.

5 Lastly, going back to the issue of people who
6 have already been in some sort of problem, in some cases, you
7 know, there are a number of problems with -- with real estate
8 practices. And I've heard a number of questions about whether
9 we should be doing more enforcement. And you can do some of that
10 on the licensing side, but in some cases, we have to branch out
11 to other agencies. And so, I have formed an interagency
12 enforcement task force, which consists of the departments under
13 my Agency, but we're also inviting the FBI and the U.S.
14 Attorney, and some district attorneys around the state.

15 And it doesn't mean that we're going to
16 predetermine that there's issues out there. It just means that
17 we've got to do an effective job of at least ascertaining
18 whether or not there are problems that should be addressed
19 through civil or criminal enforcement. And so, we're just
20 starting that process, but that's going to be another component
21 of the things we'll be doing this year.

22 SENATOR DUTTON: Well, I just want to tell you, I
23 want to compliment certainly different members of your
24 department as well as other agencies. We just did one of those
25 town halls down in Riverside this last weekend. We had over,
26 unfortunately, had over 400 attendees. It was quite impressive.
27 We had over 17 lenders, 7 credit advisors, various
28 representatives from Veterans Affairs and so forth.

1 But I was really impressed with the number of
2 compliments we had from people that actually personally came up
3 and thanked me, that they really felt that some of their issues
4 had been resolved.

5 And so, I think it's a very good program, and I
6 would certainly like to encourage you to work with all
7 Legislators to help them do these same town halls in their
8 districts up and down the state. I can tell you from my
9 personal experience, it was actually extremely rewarding for me,
10 number one.

11 But number two, I really do feel that people
12 truly appreciated the fact that they were able to have people
13 there that they felt could give them straight answers and, in
14 some cases, actually help them on the spot.

15 So, I think it was very well received.

16 MR. BONNER: Thank you.

17 SENATOR DUTTON: My final question has to do with
18 Proposition 1B funds.

19 Your Agency doesn't really have a direct
20 responsibility, but I know you've been all over this state
21 regarding it. So, I'm kind of interested in how you feel we're
22 going with the implementation and the funding of Proposition 1B
23 in general? Are we moving in the right direction? When are we
24 going to see the cranes and the ribbon cuttings? How do you
25 feel we're doing?

26 MR. BONNER: I think we're doing very well,
27 Senator. I think that -- and particularly in light of the fact
28 that a number of the programs are new programs and don't have a

1 template in place as to how -- whether it's the Legislature or
2 the administration or others would proceed. And so, you know,
3 we've done very well.

4 The industry's been great in working with us and
5 in doing what's necessary to get the bond dollars put to work.

6 In terms of numbers, I alluded to earlier the
7 fact that already to date, we have had about 8 billion of the
8 19.9 billion that's been programmed to date, which means that
9 it's been allocated toward some project or a set of projects.

10 We're hoping that by April, the Transportation
11 Commission will send to the Legislature their proposed program
12 on the next part of program, the Trade Corridors Improvement
13 fund, and that will put another \$2 billion of the bond in play.
14 And we're hoping that -- that we can get the legislative review
15 and get that included as part of this year's budget. That will
16 put us well over half of the 19.9.

17 And then, throughout the year, we have a couple
18 of those programs that will be allocated by formula. And so, we
19 expect there'll be some additional dollars in the budget as
20 well.

21 So, it's going very, very well in terms of on the
22 programming side.

23 I think the other thing that's got to happen is,
24 we need to, as I alluded earlier, work on, you know, the
25 construction lag time, is what I call it, the time between the
26 day that you program a dollar toward a project and the time that
27 you actually start construction. In some cases, it can be, you
28 know, five years into the future, and for good reason in some

1 cases. And then in other cases, it has to do with the fact that
2 we have state, local, federal players and dollars involved, and
3 two or three layers of regulatory review, and permitting
4 processes and things.

5 And it's one of the things that we have said we
6 really want to talk with the Legislature about here, to see if
7 we can make some headway this year, particularly in the area
8 where we have projects that are kind of on the shelf and ready
9 to go. And if we can find ways to expedite that process without
10 compromising air quality or those kind of things, we're going to
11 be working with you to find innovative ways to do that.

12 So, I think that, you know, the program got off
13 to a very quick start. It was just passed in November of '06,
14 and dollars were starting to be allocated by February of '07.

15 I do want to just note that -- that I -- when I
16 came in in March, and we had started to work on the goods
17 movement portion of the bond, and the Legislature was doing some
18 work in that area, and then we picked it up and kind of
19 continued through. And we've tried to be inclusive in that
20 process and work very closely with legislative staff and others.
21 And I think that the fact that the process is moving forward, I
22 think, again is a good sign that the thing is -- that we've kept
23 the whole thing on track. We've brought in the environmental
24 community. They've been very constructive as well.

25 So, I think we have great story to tell in
26 California, not just as a result of the administration's
27 leadership, but commitment that we continue to receive from the
28 Legislature as well.

1 SENATOR DUTTON: Okay, thank you.

2 SENATOR ASHBURN: On the issue of the Department
3 of Managed Health Care, and the letter from the organizations,
4 the health care administrators, that went out, I want you to be
5 a little more specific with us.

6 Do you think that the letter that was sent by the
7 HMOs to the physicians, were those appropriate letters?

8 MR. BONNER: I haven't seen specifically the
9 letters, so I don't know exactly how they were phrased.

10 But I think -- but I don't think I need to see
11 them, at least from what I understand as they've been
12 characterized.

13 Any time you're sending a letter to, you know,
14 physicians, of course they've got a loyalty to their patients.
15 So any time they're being asked to divulge information outside
16 the patient-physician relationship, there's going to be some
17 discomfort there.

18 And I think that the fact that -- that we asked
19 the question so quickly and they withdrew the -- stopped sending
20 the letter just confirmed in my mind that they acknowledged that
21 there was a serious problem with them.

22 But I'm not sure, again, not having seen the
23 letter, I don't know that I can comment more specifically on
24 whether the specific letters were --

25 SENATOR ASHBURN: Why would you not have seen the
26 letter if this is a very public issue, and you're here for
27 confirmation? Why have you not reviewed that letter?

28 MR. BONNER: Because within -- I first saw the

1 report kind of early in the day, and by the time I had picked up
2 the phone to call the Director of Managed Care, that they had
3 already been in contact with the plan. The plan had already
4 agreed or was in the process of agreeing to withdraw the letter.
5 And the investigation was opened.

6 So, and since that time, we haven't -- we haven't
7 had any -- well, I guess what I'm saying, sir, is that my
8 practice would be, if there was any question as we sat here
9 today from either the health plan side, that they thought the
10 letter still was appropriate, or from the department side that
11 they were somehow uncomfortable about doing -- investigating,
12 then yes, I would -- I would demand to see the letter so that I
13 could personally make sure that -- that they were moving forward
14 in a way that was appropriate.

15 But because they moved so quickly to take action,
16 and we didn't get any resistance from Blue Cross, there didn't
17 seem to be any area of uncertainty where I had to look a little
18 more closely to make sure that the investigation was in fact
19 going to ensue.

20 SENATOR ASHBURN: The letter has existed for, I'm
21 told, more than 20 years, the inquiry that is the subject matter
22 of the letters that are in question. And the Department of
23 Managed Health Care approved the letter as recently as two years
24 ago.

25 So, I understand your answer that an
26 investigation has been opened, but I am curious about the fact
27 that you weren't called by your department, your department
28 head, to inform you that there was a significant issue.

1 A cancellation of someone's health insurance
2 coverage, especially in light of the litigation brought in Los
3 Angeles, would seem to rise to a fairly high level of concern.

4 Do you agree or not?

5 MR. BONNER: I agree. In fact, I'm concerned,
6 number one, and surprised that the department has not raised the
7 issue that you're raising.

8 But I'm also more concerned that the health plan
9 hasn't brought that to my attention, because there are a number
10 of cases where the regulator takes issue with something, and the
11 health plan's response is that, "You approved this."

12 So, I'm familiar with that dynamic, and that does
13 present a very difficult situation.

14 I just did not understand that to be the case
15 here because as I said, what I had heard coming from Blue Cross
16 was that they had withdrawn the letter. I understood that there
17 was some question about whether they had asked the questions
18 before, but I was not aware until this afternoon with your
19 question that -- that they were actually taking that position.

20 SENATOR ASHBURN: Have you had a direct
21 conversation with the Director of the Department of Managed
22 Health Care?

23 MR. BONNER: Not verbally. This was a couple of
24 communications through -- through staff, and exchange of calls
25 and things.

26 But again, my first direction was to, "Hey, are
27 we on this?" And when the response came back that not only were
28 they already in communication with the plan and investigating, I

1 haven't had occasion to be directly involved in the specific,
2 you know, facts of it since then.

3 SENATOR ASHBURN: So, since you haven't spoken
4 directly, I guess my second question would be, what were your
5 instructions to the Department Director with respect to this
6 investigation?

7 MR. BONNER: I didn't give any instructions.
8 Again, my question was whether or not it was being
9 investigated. And when the response to that was that it was,
10 and then the subsequent briefing that I had some hours later was
11 that the investigation going forward, but that the letter had
12 been withdrawn, or that they were going to cease and desist from
13 further distributing the letter, and on that basis then I just
14 haven't, in the last couple of weeks, had occasion then to be
15 directly involved in the specifics of their review.

16 SENATOR ASHBURN: I guess my follow-up question
17 to all of that would be with respect to your administrative and
18 management style.

19 This is a fairly significant issue. You knew
20 someone knew that it was being investigated. The Schwarzenegger
21 administration has opened an investigation sometime back. The
22 press is involved in investigating it.

23 And yet, it didn't come to you. Your department
24 chair didn't talk to you. You didn't talk to them. You didn't
25 give any specific direction.

26 Is that the approach you're going to take on all
27 of the very significant departments that you oversee?

28 MR. BONNER: I don't know that I would agree with

1 the facts as you're characterizing them, because as I said, the
2 first that I heard of this was on -- I'll just tell you quite
3 frankly, on the way to the airport in Burbank to fly up here. I
4 can't tell you where I was, but I was coming back from Burbank.

5 And I was on the plane with somebody who was also
6 coming here. And we said, "Hey, what in the world's going on
7 with Blue Cross? What's going on in this letter?"

8 Shutting the cell phone off in response to the
9 airline directions, and the minute I touched the ground, you
10 know, was in communication to figure out what was going on.

11 And as I said, when I -- my greater assurance, or
12 my greater concern, is when the question is asked and either
13 there is no response, or the response is what I determine to be
14 the incorrect response.

15 In this case, had the response been, "Boy, we
16 don't know what's going on," or 'Yeah, we've seen this, and
17 we're thinking about what to do," or had it been, "Yeah, you
18 know, we've seen this but we're not doing anything," then you
19 could bet, you know, your bottom dollar that I would have been
20 very much in the middle of it to make sure that everyone was
21 moving as aggressively as need be.

22 But I had very direct assurance from the
23 beginning that -- that the department was -- had immediately
24 opened an investigation and had made inquiry. And again, an
25 investigation is an investigation. So, at that point, no, it's
26 not my style to be, you know, directly involved in the
27 investigation.

28 When that investigation is complete or completed,

1 and again, if it came back with the wrong answer, or what I
2 thought was the wrong answer, then I would be a little more
3 involved. But I haven't seen the results of -- of everything
4 that they've looked at, you know, at this point in order to know
5 whether or not I need to be more concerned about what they've
6 been doing.

7 SENATOR ASHBURN: Let me ask you about
8 transportation.

9 It's my belief that the public, the people we all
10 serve, the people are very, very frustrated in the seeming lack
11 of ability of state government, and other levels of government,
12 to build the highways, to fix our roads, to do the kinds of
13 things that you would think would be the most basic and
14 fundamental responsibilities of government for public works.

15 It's certainly enough dollars, not sufficient to
16 solve all the problems, but a significant number of dollars have
17 been approved by the voters when the voters were asked.

18 What have you done with respect to Caltrans and
19 the other departments that you oversee to get the delivery of
20 these projects sooner and for less cost?

21 MR. BONNER: Well, one thing is, we have to work
22 very closely with our local and regional partners. And the
23 reason is that all of these projects have -- are multiple
24 funding sources. So, it's the rare if ever case that -- that is
25 only state dollars that's going to a project. Typically it's
26 federal dollars.

27 In many parts of the state you have local
28 measures also, so there's local taxes involved, and then some

1 state dollars. And so, it's a constant dialogue to work with
2 the local and regional players even to determine and come to
3 agreement on -- on the priorities and the pace of a project.

4 Then you have the environmental reviews, and all
5 those kind of things that -- that are involved as well.

6 So, it is a constant struggle. I think -- I
7 don't have all the statistics with me, but I think the Caltrans
8 numbers look fairly -- pretty good in terms of their delivery
9 rate. It's almost 100 percent and on track as to where they
10 should be.

11 And when I came in, I learned that term
12 "delivery," when someone says a project's delivered, I think
13 that means that somebody's out building the project. And then I
14 learned, well, what that means is, it's ready to go out to bid.

15 And so, then you look at things like making sure
16 that the contracting process really is what it needs to be in
17 terms of specifications being clear, and all those things. And
18 I think they've done a pretty effective job at that as well.

19 Where we are really finding some -- some drain or
20 drag, I should say, on the process is on all of the layers of
21 regulatory review that are required even from the time that you
22 say, "Hey, okay, we're going to build this project." And then
23 you've got not only the state permitting processes, in some
24 cases the right hand not working in step with the left, the
25 federal level as well.

26 So, some of the things we've done in Southern
27 California, for example, we have signed on to an agreement with
28 a number of counties there who have agreed to -- and we've also

1 got the U.S. EPA and some others who are relevant players, where
2 we have agreed to work together in identifying projects that
3 we're going to try to expedite and -- and get them going as
4 quickly as possible.

5 Until we do some other things, which we are not
6 -- the administration is not currently proposing -- wholesale
7 reform of CEQA, and those things -- but we do have to look at
8 some of those things to make sure that we're actually fulfilling
9 the obligations of those laws, but doing it in a way that
10 doesn't have dollars, you know, languishing for too long a
11 period of time.

12 SENATOR ASHBURN: It seems to me that you need to
13 establish a Department of Innovation, especially with respect to
14 building projects and getting projects moving on time.

15 Large organizations are what they are. And
16 people tend to do things the way they've done them. And yes,
17 the Legislature has created, you know, almost a mine field of
18 obstacles to get things done.

19 But it seems to me that having some folks come in
20 and take a look at our practices in California, the way other
21 jurisdictions across the country and around the world are doing
22 things to get things done, would be maybe a shot in the arm for
23 folks. So, I hope you'll do.

24 One final question, and that has to do with the
25 office that's within your responsible area, the Office of
26 Military and Aerospace Support. It's scheduled for sunset on
27 January 1, 2009.

28 The aerospace industry and space are

1 extraordinarily important to California, a lot of jobs, and you
2 talk about innovation and benefits into the future.

3 What are your plans for that? Is the
4 administration going to sponsor legislation to extend that
5 sunset?

6 MR. BONNER: Yeah.

7 I'll tell you my immediate plan for that. It
8 really is to get to the bottom of the reason why we don't -- I
9 can't tell you the direct answer to that question. And what I
10 mean by that is, when I came in in March of last year, and they
11 had commissioned a study, I think, with the California Space
12 Authority, which was doing some work to comment on what the
13 mission really should be.

14 You know, historically that office had -- its
15 most recent mission had been to help us deal with the round of
16 base closures. And so in the '90s, for example, the mission was
17 very clear, and we were working very well with them on that.

18 Then it became a little less clear as to what was
19 the most effective charge for them to have. So, there was the
20 study that was commissioned, and something that I'm reviewing.
21 And it is -- I mentioned earlier in terms of the focus that
22 we've tried to achieve here.

23 So, one of the things that I have done is in
24 rerouting some resources to have a professional economic -- a
25 development person in my office and who has the background and
26 expertise to help us really to redefine that mission for the
27 reason that you suggest, that I've met with -- although we
28 haven't made the progress on defining the strategy in, you know,

1 going forward.

2 We have nonetheless tried very hard to build and
3 maintain the relationship because of what you suggest, that NASA
4 is very important. I think they invest about a third of their
5 research dollars and development dollars here in California. Of
6 course, we want to have that continue. And a lot of the
7 technologies that they work on and developments that they bring
8 to market are -- have spin-off, have positive spin-off effects
9 in California.

10 So, there's no question about the
11 administration's commitment to NASA and the space program and
12 the industry.

13 I think what we're trying to do right now, as I
14 say, my commitment really is to get to the bottom of this issue
15 as to what their forward -- their future charge is really going
16 to be.

17 SENATOR ASHBURN: Thank you very much.

18 CHAIRMAN PERATA: Gilbert.

19 SENATOR CEDILLO: So, congratulations and thank
20 you for being here.

21 MR. BONNER: Thank you.

22 SENATOR CEDILLO: I appreciate the time we were
23 able to spend together.

24 I should note also that you've received a lot of
25 broad support in terms of your availability from some of your
26 departments, and particularly the CHP. I have noted a very
27 hands-on approach, and I applaud you for that.

28 MR. BONNER: Thank you.

1 SENATOR CEDILLO: I appreciate the time, and I
2 want to ask you questions that we had a conversation about
3 regarding REAL ID.

4 Let's begin with the status and where we are with
5 respect to implementing the federal legislation? Specifically
6 I'm interested in timetables.

7 There was a May 11th this deadline. There was an
8 extension. So, I want to know basically who asked for the
9 extension? Criteria for the extension? And then, what type of
10 activity, or what need did we express or articulate in terms of
11 the need for that extension? What type of activity do we
12 anticipate the department engaging in to bring us into
13 compliance by the date of December '09?

14 MR. BONNER: I think it's now at 2011 or 2013
15 now.

16 The broad answer to the question, before I
17 address it more specifically, the broad answer to the question
18 is that the initial draft regulation was revamped, and there was
19 a number of changes to it. And that revised rule was -- or the
20 final rule came out in -- in January.

21 And so, we are in the process of now making sure
22 we understand exactly what the changes were, and what that
23 impact will be on California. So, that's kind of the broad
24 answer.

25 One of the things I think you alluded to in your
26 question was the fact that the -- the final rule allowed for
27 extensions of time, which we've requested and were granted an
28 extension until May of '09 to come into substantial compliance

1 with the rule. And so, we are pleased that we were able to get
2 that additional time.

3 The final rule addressed some of the issues and
4 concerns that had been -- that had been communicated relative to
5 the schedule. We were concerned about having to bring in a lot
6 of people that would ordinarily not have had to come in in
7 person, bringing them in, you know, in a short order without
8 being fully able to do that. And under the revised rule, that
9 schedule's pushed out, you know, a bit. So, that we got some
10 accommodation there, and that helped us a little bit with what
11 we had -- the concerns we had on the potential cost.

12 The areas that we are continuing to look at very
13 closely involve privacy. You know, how people in California can
14 be ensured that their information will be secure, and those
15 kinds of things.

16 And one of the problems that we have is that we
17 in California have a very secure license now, and are recognized
18 around the country for that. And other states don't. And so,
19 one of the things that the federal government wants to do, of
20 course, is to have a -- kind of a national data base. And the
21 security of that is only as strong as the weakest link. We have
22 raised that concern as well with the Federal Department of
23 Homeland Security.

24 And I think their inclination was to ask us to
25 work with the other -- Association of State Motor Vehicle
26 Administrators, and for the states to try to do some further
27 work to figure out how they may be addressing those issues.

28 So, until we understand more about where those

1 issues may -- may be coming out, we're not going to be fully
2 able to answer the question, one, as to whether we'll have any
3 ultimate concerns with coming into compliance.

4 So, those are, you know, kind of the key
5 issues. Then I'm not as familiar with all of the other
6 subtleties. DMV tells me there's a second or third tier of
7 issues, more specific kinds of things that they're looking at as
8 well.

9 SENATOR CEDILLO: Last year, Assembly Member Huff
10 brought compliance legislation to the Legislature. It failed in
11 its first committee and did not pass.

12 So the question is now, when are you planning to
13 ask the for the Legislature to give you approval to implement
14 REAL ID?

15 MR. BONNER: Well, you know, it's hard for me
16 to -- to answer that question without having a report from DMV,
17 a more comprehensive report from the DMV as to what concerns,
18 continuing concerns that they may have with the final rule.

19 I believe you -- I know that -- well, I'm aware
20 that you have authored legislation in the past, and I think you
21 still have some legislation pending. And we're going to
22 continue to work with your office in evaluating that
23 legislation.

24 But it's probably a little -- just a little too
25 early for me to give you any more specific comments, since it's
26 been maybe less than a month since the final rule has come out,
27 and I just haven't had that full -- more full briefing from the
28 DMV at this point.

1 SENATOR CEDILLO: That's fair.

2 Let me ask, you indicated in the written response
3 that new implementing statutes will be required for us to move
4 forward. You're probably going to change or expand the number
5 of individuals. Even if we don't expand it, we need
6 implementing statutes to change it.

7 Let's talk about the expansion side now. There's
8 an estimated 2.5 million undocumented immigrants awaiting this.
9 You indicated that that would triple your workload.

10 You posed the question. If all of them applied,
11 I assure you that the degree of participation will be very high,
12 and that you could anticipate a high level of participation in
13 the expanded program.

14 What actions, what activities, are you engaged
15 in? What plans are being prepared to execute that, those
16 changes?

17 MR. BONNER: Well, you mean to allow driver's
18 licenses for undocumented residents, or --

19 SENATOR CEDILLO: To accommodate. You talked
20 about that one of the challenges is that if 2.5 million
21 undocumented persons apply for a driver's license under a new
22 authorizing statute, they would be subject to a full range of
23 written and driving examinations -- we know that -- thereby
24 tripling the current workload of original driver's license
25 applicants.

26 So the question is then, what preparations are we
27 making for that time when 2.5 million applicants will apply?

28 MR. BONNER: Sure. You know, quite candidly,

1 Senator, I can't tell you that we're making specific plans to
2 move in that direction, in part because we haven't had the --
3 you know, the Governor has -- has wanted to see some broader
4 immigration reform before committing to sign whatever
5 legislation might be necessary to really make that happen. And
6 I haven't had the benefit of his most recent or his latest
7 thinking on that issue.

8 But I think our key -- especially the DMV, their
9 key focus is just making sure that they understand what the
10 administrative implications would be, so that when that policy
11 determination is made from the -- between the Legislature and
12 the Governor, that they would be prepared to carry it out,
13 depending upon what legislation might ultimately come forward.

14 SENATOR CEDILLO: I think Mr. Ashburn would ask,
15 is that prudent, given the fact that we're going to have a
16 change in the presidency?

17 I understood that position when immigration
18 reform seemed imminent, when it looked like there was a
19 compromise that was going to happen, and arguably the C-Visa
20 would create a circumstance that would make this question moot
21 for the 24 or 25 million motorists everyday who wish and hope
22 that we have the safest highways, and for all of us concerned
23 about national security.

24 But we know now that immigration reform is not
25 going to happen until we get a new President. I don't
26 anticipate that it's going to be something done within days,
27 weeks, and months of a new presidency, and so we have a deadline
28 that confronts us, December of '09.

1 Is that prudent or realistic to hold a position
2 that we should wait until there's immigration reform, when the
3 real question is the prospects of 24 million Californians being
4 unable to board an airline, or 24 million Californians being
5 unable to enter a federal building because the validity of our
6 driver's licenses will be not recognized by the federal
7 government?

8 MR. BONNER: Yeah. I think I may have misspoke
9 if I said or suggested that we were going to wait for the
10 comprehensive reform in order to continue planning or evaluating
11 what it may take to comply with REAL ID.

12 I thought that the question was, what
13 preparations were being made to issue driver's licenses to the
14 2.5 or so million undocumented immigrants. And it was on that
15 issue, and both really, where -- what I'm trying to say is that
16 what the department is focused on, what I've asked them to focus
17 on, is just making sure that they have the best information as
18 to what the implications are, one way or the other, because
19 they're not going to set the policy, obviously. It's going to
20 be set between here and the Governor.

21 And so, what I've asked them to focus on is
22 making sure that they understand what the implications are so
23 that that information can be factored into the analysis here,
24 and they would be ready to go forward with whatever
25 determination might be made as to how they should proceed.

26 SENATOR CEDILLO: I accept and appreciate that.
27 Those policy decisions will be made between the Legislature and
28 the Governor.

1 But I am concerned that there are 24 or 25
2 million Californians who rely heavily on their driver's license
3 as their primary form of ID. And we may reach a point shortly
4 that those IDs are not accepted. And I'm concerned that
5 Californians do not know that that maybe the case that is
6 imminent.

7 I am concerned that we are not preparing them, or
8 making them aware either, and preparing the department and the
9 infrastructure for those changes. Or, if we choose not to make
10 those changes, to make the residents of our state aware that
11 there's consequences for that.

12 I share that with you.

13 Let me add also that you did respond in terms of
14 preparation for REAL ID, that no changes in our current
15 practice. The TSA will continue to accept our IDs for boarding
16 airlines and entering federal facilities. We appreciate that.
17 But that we're going to be awarding a new contract in late 2008
18 with full implementation by the end of 2009, a new driver's
19 license ID contract.

20 And so the question is, with respect to that, I
21 trust there is a Request for a Proposal out at this moment.
22 What does the Request for Proposal say with respect to the
23 second tiered license that is part of the REAL ID?

24 MR. BONNER: The second tier license, you mean
25 that which might be used for driving, but not for entering --

26 SENATOR CEDILLO: That's right.

27 MR. BONNER: You know, I don't know that I can
28 answer that question specifically as to what the RFP -- or what

1 the RFP may or may not say about that.

2 I think the broader answer is that the -- of what
3 I alluded to earlier, that we believe that the new driver's
4 license that's going to be procured is going to have sufficient
5 privacy and security features that will be very complimentary,
6 if not, you know, compliant with -- with what ultimately might
7 be required in the REAL ID.

8 On the subset issue of what -- how it might work
9 for those who would use it simply for driving purposes, I don't
10 know that I can answer that as I'm sitting here.

11 SENATOR CEDILLO: On the question -- and maybe
12 it's just because we're in an airport no less than twice a
13 week -- but I'm concerned and I want to know what concerns or
14 what impacts you anticipate should we choose not to comply?

15 What would be the impact if we choose not to
16 comply on that public, that traveling public, that moves through
17 our state, through all the airports of our state on a daily
18 basis, if they're unable to board an airplane with a California
19 driver's license? What's going to be the impact on our economy
20 and our ability to do the type of business that we do?

21 MR. BONNER: Yeah. Let me -- I would say two
22 things.

23 Number one is that I think, you know, my answer
24 might be different if you asked me that question even a month
25 from now, or, you know, three weeks from now, a month from now,
26 two months from now. In part because of what I alluded to
27 earlier, and that is that the final rule having so recently come
28 out that it's just -- that we're just, as we sit here today, not

1 able to answer all those questions fully until a more complete
2 review is done.

3 So, I think, again, if you asked me that question
4 a few weeks from now, the answer might even be different.

5 Then the other thing that may happen is that the
6 Department of Homeland Security, although they're not open for
7 the same type of changes as they were pursuing before, you
8 alluded to the fact that there's going to be a new
9 administration and so on. So, there may also -- there may at
10 some point be some further changes that will address even some
11 of the other issues that we have raised relative to privacy and
12 security, and some of those things. So, it's a little bit
13 uncertain in that regard.

14 I agree with you that there will come a point
15 where you do have to make your best judgment as to whether or
16 not we're going to comply or not comply, and to make sure that
17 the public understands what the implication of that is. I just
18 don't think that we're there as we sit here today.

19 SENATOR CEDILLO: I won't belabor the point. I
20 just will suggest that time is finite for compliance, which
21 means that there is an end date. And whatever route we choose,
22 we have to make a plan to execute that route from beyond that
23 date. There will be consequences in either direction that we
24 go.

25 MR. BONNER: It's a fair point. I understand the
26 point.

27 SENATOR CEDILLO: On a separate matter with the
28 Department of Managed Health Care. We've had high profile

1 incidents in downtown Los Angeles. We've been working on
2 homelessness in our state, and we've had a series of high
3 profile instances of patient dumping. We feel, obviously, very
4 strongly about that, and we are working to make sure that that
5 is not recurring.

6 So the question is, what is the department's
7 policy with respect to referring cases for criminal filings when
8 those matters occur? I'm concerned with what does the
9 department do with respect to its relationships with
10 prosecutors, our local prosecutors, our DA, our city attorney
11 with respect to the filing of charges for criminal
12 investigation?

13 Who in the department has that authority? Who
14 has the discretion on those referrals?

15 We didn't get a chance to talk about these
16 matters in our meeting, so if you need more preparation I think
17 that's fair.

18 But I have a dozen questions with respect to
19 that, and you can either choose to lay out a framework at this
20 point or --

21 MR. BONNER: I'll comment briefly. And I don't
22 -- some of those specifics, I think, would be -- would lend
23 themselves to a very good conversation.

24 Broadly speaking, I would say that in many of the
25 cases we've seen are in downtown L.A. and have not involved
26 patients who have been enrolled in managed care. And for that
27 reason, it's not something that you would expect to see happen
28 because it's, unfortunately, the kind of thing you see happen to

1 the most vulnerable classes of patients who either have mental
2 problems or other problems where they have no insurance. That's
3 why they are kind of treated, I think, very unfairly at the
4 lower rung of the patient ladder, if you will.

5 So, the short answer is that -- that most of
6 those -- and I'm not aware of any that have actually been
7 enrollees, covered by the regulations administered by the
8 Department of Managed Health Care.

9 If they were, I can assure you that -- that not
10 only would the department come down pretty harshly on the
11 relevant health plan, but we would make sure, since the
12 department doesn't directly regulate the hospitals that have
13 been involved in some of those cases, would make sure that they
14 took a look at whether they should continue to be a part of the
15 networks that are eligible to contract with -- with health
16 plans. So, that's kind of a general answer, you know.

17 More broadly, I'd say that any time the
18 department does have a referral process. They use that mainly
19 between their department and the Department of Insurance. And
20 there are occasions when, whether it's a local district attorney
21 or a city attorney, or other prosecutors that may be involved,
22 where they exchange information.

23 But I think it's a rare case when it's on a kind
24 of criminal activity. But I'd be more than pleased to develop
25 information in more detail and come back and talk to you about
26 it.

27 SENATOR CEDILLO: Okay. I think just for
28 fairness, since we didn't have an opportunity to talk about this

1 in my office.

2 MR. BONNER: Thank you.

3 SENATOR CEDILLO: We do have a series of
4 questions, and we'll share them with you for a return visit.

5 MR. BONNER: Okay, I appreciate that.

6 CHAIRMAN PERATA: We will take a ten-minute
7 break.

8 [Thereupon a brief recess was
9 taken.]

10 CHAIRMAN PERATA: Senate Rules Committee will
11 reconvene.

12 I had to go and get myself sugar loaded.

13 MR. BONNER: Did you bring any back to share?

14 CHAIRMAN PERATA: Now I'm all set.

15 What I'd like to talk first about is the Caltrans
16 lawsuit, the litigation over the ADA.

17 You and I talked about this. You know that I
18 carried a bill that would disqualify the state from using the
19 courts as a way of noncompliance with ADA.

20 The more I think about it, whether or not this is
21 an effort to not comply or not, my bottom line is that we should
22 obey the law and get it done.

23 First of all, what's the status right now of the
24 lawsuit?

25 MR. BONNER: The status is, in fact I believe
26 there was a hearing scheduled for yesterday or today on one --
27 to hear this issue about the forum in which this court -- this
28 issue could be resolved.

1 And I haven't yet, as late as this morning, heard
2 that there's a resolution of that one way or the another.

3 Beyond that, the parties, as I understand it, are
4 exchanging information, as you do in a lawsuit, and have
5 submitted what the court calls a case management brief for both
6 sides, just try to tell the court what the case is about. And I
7 think they've gotten about that far. And that's where I believe
8 that the case is positioned.

9 CHAIRMAN PERATA: What are we contending in our
10 defense?

11 MR. BONNER: Well, the main thing that I
12 understand this case is about -- and I don't profess to have all
13 of the details because I started learning about it just a few
14 weeks ago, shortly before I met with some of the -- the parties
15 to the lawsuit or those who were involved.

16 And the crux of what the case is about, as I
17 understand it, is whether Caltrans is moving fast enough to
18 actually survey and evaluate their level of compliance, and
19 devoting sufficient resources to come into compliance, and to do
20 it quickly enough that complies with the ADA.

21 And as you note with your legislation, and the
22 one reason I think you authored the legislation -- I wasn't here
23 then -- but I think one reason you authored it was because there
24 is an Eleventh Amendment issue when states are sued either by
25 people from other states, or so on, in a federal court.

26 And in this case, I think it's a little -- and I
27 think one of the reasons that these groups are concerned about
28 that is because typically what the state is arguing is that

1 somehow that, whatever the federal law is, even if it's
2 constitutional -- in this case we -- Caltrans agrees it's
3 constitutional -- there's a question about whether you can go to
4 a federal court and have the court apply it to your situation.

5 And here, you know, Caltrans doesn't dispute the
6 constitutionality of the ADA. In fact, they've been -- they've
7 spent probably \$100 million even very recently in complying, and
8 they've been doing some of this work, admittedly not quickly
9 enough. And they had put together a plan in '97, that was a
10 ten-year plan that was set to be updated in 2007. And I think
11 plaintiffs identified some shortcomings not only in the plan,
12 but you know, the pace at which it was moving forward and so on.

13 And I'm not aware of all of the circumstances
14 that led up to the -- the filing of the lawsuit, but since the
15 lawsuit has been filed, what they have asked me is to kind of
16 direct Caltrans to settle the suit and not raise the
17 constitutional issue or the jurisdictional issue.

18 And I think like most cases, I mean, you know,
19 some 90 percent of cases that are filed get settled before they
20 actually go to trial, and that's what I would expect and
21 certainly hope will be the case here as well.

22 They've got some catch-up to do in terms of
23 understanding what it would take to -- to resolve the case. And
24 so, what I'm doing, and since I've met with them a couple weeks
25 ago, I made a commitment to get a little more familiar with the
26 case and to try and see if we could move it along.

27 And so, the two things at least we're doing, one
28 is to put some more resources on expediting this updating of

1 their transition and compliance plan, so that they actually
2 understand where they are and what needs to be done. And we're
3 asking for some additional resources, almost \$7-1/2 million, to
4 do that more quickly.

5 And then you get to the question of -- of some of
6 the things they're doing now as the lawsuit is going on. One of
7 the issues relates to the curb ramps, the curbside ramps. And
8 Caltrans, I believe, had a program that was allocating about a
9 million dollars a year to addressing some of those ramps, which
10 might take potentially some 50 years or something to complete
11 that program.

12 So, when we did a little digging and found out
13 that we were able to -- or are able to reallocate some
14 resources, and so I've increased that ten-fold to \$10 million
15 and said, "Hey, let's do it in a way that would get that work
16 done in something closer to five or six years." So, that's
17 just one part of the lawsuit.

18 But I think that when they get this evaluation
19 done, they'll have a better idea of what their shortcomings
20 might be in compliance, and that will then, I think, put both
21 parties in a better position to sit down and talk about what a
22 resolution to the case might be.

23 CHAIRMAN PERATA: I would like to ask you to have
24 somebody appropriate prepare a quick-and-dirty on the
25 compliance, and the overall cost, and a timetable.

26 We heard here earlier that we passed Jessica's
27 Law, and all of a sudden \$33 million a year is being allocated
28 to process potential perpetrators, dangerous people. And

1 they're doing it.

2 They don't have any more money than you do. So,
3 it seems to me that if I were an active member, or just a member
4 at all of the disability community, and someone was putting a
5 million dollars a year into something, that would be offensive.
6 Obviously, more people feel at risk with sex offenders than they
7 do people in a wheelchair, but what's right is right.

8 So, well beyond whatever we're doing with the God
9 damn lawsuit, which I find offensive, I want to see that
10 question answered.

11 It also occurs to me that I don't know that
12 there's any discretion in the 1B bond money, but since these are
13 capital projects, I don't know where they would fit in. You
14 don't have to have access on and off a freeway.

15 But the thing that is unfortunate, and you'll
16 probably be here while they're talking about some other bond for
17 some other purpose, had we known that at the time, because we
18 stuffed stuff in there. I didn't know what a grade separation
19 was. My whole adult life, and I never knew what a grade
20 separation was until I met Bob.

21 But if someone can spot that and say, we need 50
22 or 100 million dollars to facilitate because this is the law,
23 that would be helpful.

24 But it didn't come up, and I'm not blaming
25 anybody. I didn't think of it.

26 But it's things like that that could be useful
27 because while we may have operational money difficulties always,
28 the bond thing -- and this one thing my Republican colleagues

1 and I agree, that if it's a long-term investment, it's an
2 appropriate expenditure for debt service.

3 I want to assure you that I'm very serious about
4 this. I'm a fun guy normally, but this is something that
5 matters a lot to me, and I know it matters a lot to you. We've
6 had this conversation.

7 It just has to become a priority. I, for one,
8 would like to see that lawsuit go away. I mean, I don't know
9 what's in there that would persuade me that it was worth
10 whatever we're paying to pursue it.

11 Then what I'm going to do is, I was going to
12 reserve some of these things for the end, but let me just go
13 through it.

14 We talked a little bit when we met, I want to
15 thank you. You've been very responsive to me on 1C. And I've
16 told you that one of the things that I dismay over most in a
17 state this size, and in an agency as large as yours, how easy it
18 is for the careerists to impose their will upon their
19 department, as opposed to the legislative intent.

20 If we don't have legislative intent, and some
21 people think that we act thoughtlessly most of the time, but if
22 you look at 1C, the first part of that bill that dealt with the
23 transit oriented development, here was an arguable basis there
24 that we didn't have legislation, so maybe the way they were
25 interpreting it was not the same way we wanted it interpreted.

26 It was not the case with infill. And yet, had it
27 not been for you, and your intercession -- this thing went a
28 long way up the food chain before it got to you -- we would have

1 had a distribution of those housing funds -- and I'm speaking
2 prospectively because I know the regs haven't been put out
3 yet -- but they would have been in direct contradiction to what
4 we had in mind when we did this. By we, I'm talking about those
5 of us that worked on this thing.

6 So, by busting it up into -- by making it an
7 affordable housing program as opposed to a program that was
8 going to jump start, because that bond had plenty of money in it
9 for affordability, but these were blasting cap intentions, where
10 you could go, and they call it the fancy phrase now, the
11 transformative projects.

12 We saw stuff when we went up and down the State
13 of California that was really doing well, and we wanted to
14 replicate it, and we wanted to have the state involved.

15 You've seen this agency twice. I think one of
16 the things that would be very helpful the next couple of years
17 would be for you to think about how to unburden that agency.

18 My instinct was to take that HCD and move it, put
19 it in the Treasurer's Office with the brownfield program, and
20 it's basically handing out money.

21 I was going to say something about managed care.
22 I have the same feeling there.

23 Now, fortunately for everybody, they're not going
24 to be at risk because I'm going to be gone, and I don't think my
25 after life is going to be spent on dismantling an agency.

26 But I am troubled that if it hadn't been for the
27 doggedness of the people who worked on that bond, my staff, and
28 then your intercession, it wouldn't have happened. It's just

1 something -- you're a bright guy, and you're a systems guy as
2 you look around.

3 I know it happens. People dedicate their lives
4 to a career, and they get engaged, and they get protective.
5 It's natural. As long as it doesn't conflict with people who
6 got elected. We trump them. But for the grace of God, we'd be
7 doing that. And they're not term limited, I might point out. I
8 noticed that.

9 I want to thank you for that.

10 Then I want to talk about public-private
11 partnerships, because that's what we do around here, is we talk
12 about it all the freaking time.

13 And it's kind of like cloud formations, you know.
14 You look at a cloud, I look at a cloud. I see Snoopy, and you
15 see Donald Duck. You're not wrong, and I'm not either.

16 But I've had more conversations about
17 public-private partnerships, and you know, it kind of reminds me
18 of Springsteen's "Glory Days." Everybody's talking, oh, we're
19 going to do this, getting jacked up in the locker room. And
20 then they walk out of the locker room, nothing happens.

21 Your agency has Caltrans, and Caltrans, under
22 Will's direction, has kind of become the mother of invention.
23 But you have a \$1.5 billion shortfall, itemized for every year,
24 as far as I can tell, and as long as you calculate, for
25 maintenance deficiencies. So, we're going to be falling behind
26 every year half again.

27 And so, what I would favor in the area of
28 public-private partnerships, at least in Caltrans, is for

1 looking for some innovative projects.

2 And I met with Randy the other day, and he was
3 talking about roadside signs, and reusing the air space over the
4 freeways.

5 What I told him was, forgetting all the other
6 arcane things that go into this -- you guys send too many people
7 to meetings.

8 MR. BONNER: I agree with that, definitely. My
9 staff will tell you that.

10 CHAIRMAN PERATA: Everybody that's got a uniform
11 doesn't have to come. We're only going to play so many guys;
12 right?

13 I like that you travel light. You only roll with
14 one guy, and he's dozing off now.

15 [Laughter.]

16 CHAIRMAN PERATA: But he was awake in my office.
17 Just checking.

18 So, the point of it is, I would favor that if you
19 came up with some of these things to create revenue streams off
20 of lease arrangements or whatever, that money should not go into
21 the PTA account. It should go back into the road fund. It's
22 money that's derived from an activity on a highway or on a
23 roadway, and therefore the money should go back in there.

24 I like those ideas. I know you've done something
25 with Sac State. And I would just encourage you to put the metal
26 down on that thing and get those kinds of things done, because
27 otherwise, everybody thinks a public-private partnership is
28 selling a bridge, literally, and leasing it back to Goldman

1 Sachs or something. I mean, the Bay Bridge becomes the Goldman
2 Sachs Bridge. Or the Golden Gate Bridge, who'd notice; right?
3 Goldman Sachs, Golden Gate.

4 [Laughter.]

5 CHAIRMAN PERATA: Golden Grain.

6 It would be bad, though, because people kill
7 themselves on that bridge, and that's really bad. They'd be
8 conflicted. Make money; bad publicity.

9 [Laughter.]

10 CHAIRMAN PERATA: I told you, one little cookie.

11 [Laughter.]

12 CHAIRMAN PERATA: But I've been in one too many
13 meetings in the Governor's Office talking about this. And the
14 problem is, there's not enough guys like you in the room when we
15 talk about it.

16 I would just encourage you to run like the devil
17 with this. I know the Governor wants it. That's the
18 interesting thing. There is not a lot of disagreement here.

19 But when we ended up talking about doing toll
20 roads, we always take these large projects that the state owns,
21 and then immediately you have sides. Whereas, if you go and do
22 something that hasn't been done before -- I mean, I'm not
23 offended by a roadside sign that says "Wendy's" and California's
24 making money on it. I'd like that. It's going to say "Wendy's"
25 anyway; better us than them.

26 So, go and do that.

27 Bob didn't mention this, but I wanted to bring it
28 up. On the grade separation stuff, we did talk about that a

1 little bit.

2 There is no question that the Inland Empire pays
3 a disproportionate price for where they are, and in the line
4 from the ports.

5 What are your thoughts on that whole thing, and
6 what we can do with that?

7 I know it's complicated. I learned that much.
8 But in talking to his constituents, they don't have a lot of
9 patience when you say, "You know, this is really complicated,"
10 because they're waiting for a 100-mile train to go by.

11 So, is that something that where you can make a
12 priority? Is that the CTC? What would you think?

13 MR. BONNER: At the end of the day, it is the
14 CTC. And of course, we have a role to play in talking with them
15 and others who have a hand in addressing all of these issues.

16 I think that one thing I'm aware of is that
17 Inland Empire counties have joined this consensus group that
18 includes their friends to the west in Los Angeles and --

19 CHAIRMAN PERATA: I've never heard that put that
20 way before.

21 MR. BONNER: I don't know if they're using that
22 term, but I'm hoping that if I -- if I use some of these terms,
23 maybe it'll trickle down, and everybody will feel better about
24 this.

25 But they have a regional goods movement plan in
26 that area. I think it's about twelve agencies across five
27 counties that have come together.

28 One of the discussions we had earlier in the year

1 was about some of the concerns about having an overly top-down
2 approach, where the state would come in and say, "Hey, you do
3 this grade separation now, and that one now," and so on. So we
4 have, of course, have not taken that approach.

5 But what we are doing is to make sure that that
6 consensus group does actually represent the -- and address the
7 interests of all of the players who have come together to --
8 jointly, to address their goods movement needs.

9 It's important to look at that as a system. You
10 know, even though you have the San Pedro Ports and L.A., that
11 you plan out those goods move up and throughout L.A. County, and
12 then out to the Inland Empire. And so, what we've been asking
13 them, all the players to do, is to make sure they're looking
14 beyond the boundaries and understand that what's going on in the
15 Inland Empire is impacted by what's going on at the ports.

16 So far, the plan and the package that they've put
17 forward, as I understand it, generally reflects that awareness
18 and that cooperation. They have worked very hard to kind of
19 scrub up a list of priorities that includes a number of grade
20 separations that are of high priority to them.

21 And in a couple weeks, they'll be -- they're
22 being evaluated now, and they'll be commented on by the CTC and
23 their staff sometime in March.

24 So, it's hard for me to predetermine actually how
25 they'll work, but I think that I am assured by the fact that
26 they have, at the local and regional level, have done a pretty
27 effective job, I think, in identifying what some of the high
28 priorities are in terms of grade separations.

1 CHAIRMAN PERATA: Does your agency have any
2 direct control or authority of the High Speed Rail Authority?

3 MR. BONNER: No, we don't. They're -- it's
4 governed by a board that's appointed separately.

5 CHAIRMAN PERATA: I guess we're going to put that
6 on the ballot. I mean, it's on the ballot again. We haven't
7 taken it off yet.

8 You don't want us to take it off this
9 time?

10 SENATOR ASHBURN: I'll tell you later.

11 CHAIRMAN PERATA: Okay, you didn't want to take
12 it off last time, okay.

13 Republicans are spendthrifts. They want to spend
14 money all the time.

15 [Laughter.]

16 CHAIRMAN PERATA: I noticed on your
17 organizations, and I thought it was rather bold of you to list
18 this, that you are a member of the California Performance Review
19 Commission.

20 MR. BONNER: Yes, I was.

21 CHAIRMAN PERATA: It's like I can never find
22 anybody who voted for Nixon. I could never find anybody that
23 was on this commission, but here you are.

24 This is a case in point. The Governor came in,
25 and he was going do blow up the boxes. He found out that it's
26 not that easy. There're very determined people around here that
27 will not let the boxes be alighted.

28 So, they came forward with some stuff, but a lot

1 of the things that everybody thought sounded good, somehow
2 didn't happen. And I just refer back with the experiences that
3 you had at that time, and within the context of your rather
4 large, diverse agency, I'd be interested to know, as soon as the
5 taxpayers, how you could apply some of those things
6 administratively. I know that there are probably opportunities
7 to remediate redundancies or repetitions in service, or make
8 recommendations.

9 I'd just, since you sat there and you wasted -- I
10 mean, you used some of your --

11 MR. BONNER: Invested.

12 [Laughter.]

13 CHAIRMAN PERATA: Invested, yeah. I always
14 confuse those two words.

15 And finally, like my two colleagues, on the
16 managed care enforcement, I cannot imagine a human being who's
17 have a problem with their HMO calling the Department of whatever
18 this is called. This is not unlike people with disabilities.
19 This isn't an academic exercise for someone who is in trouble
20 with their HMO, or being horsed around. And let's face it, Blue
21 Cross, rightly or wrongly, is the poster child for everything
22 that's gone wrong with HMOs.

23 I think you've got to put a much sharper point on
24 it. I think that we have to have answers to questions. Adding
25 personnel might be nice, or a deputy.

26 But you should have seen that letter. You should
27 have been all over it, in my judgment. I think that's the point
28 that Roy was making. You know, I'm in the cheap seats here, but

1 I've never understood why -- and I'm not asking for your opinion
2 here, but that seems like a real mismatch, is to put Managed
3 Care into that agency, as opposed to into a health agency. I
4 suspect it had something to do with the parties of interest, or
5 the special interests, which the Governor calls stakeholders.
6 He calls ours special interests; he calls his stakeholders. But
7 it just never struck me of being a very good fit.

8 I mean, about the worst thing you could say to
9 us, it really doesn't belong here. We don't have the
10 temperament, or we don't have the horse power.

11 You certainly don't have a back-up system. You
12 don't have a lot of the resources that exist with the Department
13 of Mental Health. They're in that agency.

14 So, I'm just curious, and you can just answer
15 this off camera. You can send me a blind e-mail. A lot of
16 people will read it that way.

17 But I would just ask you to think about that,
18 because maybe it's, even if you fixed it, it would remain broken
19 just by the nature of its location and the temperament of people
20 that have to do it.

21 MR. BONNER: I'd be pleased to answer it now, if
22 I could.

23 CHAIRMAN PERATA: Sure.

24 MR. BONNER: And any of the above.

25 It's interesting, because if you go back to when
26 Knox-Keene was first at the AG's Office in the 1970s, and at
27 that time when the Knox-Keene Act was enacted, it was -- there
28 was strong consideration of putting the program at the

1 Department of Health Services. And if you dig out all of the
2 newspaper articles and the things at that time, there was a
3 distinct lack of confidence in the Legislature on the part of
4 the individual who was running the Department of Health Services
5 at that time. So, that was one consideration.

6 Also, a lack of understanding from others, you
7 know, at that time as to what the program meant, and how it'd be
8 done, and so it was put then at the Department of Corporations.

9 I think that as it's evolved, it is fundamentally
10 insurance regulation. There's a heavy insurance regulation
11 component to it, which is the -- why it's not as easy to say put
12 it at Health and Human Services, because when you -- they don't
13 have the accountants, the expertise to do the solvency
14 regulation and that component of it, which is, as I say, a key
15 part. Because it's often times what you see going on in the
16 financial side, that's what you see playing out on the back
17 side, with plans trying to do things to reduce their claims
18 costs, and those things. And they're doing it for reasons that
19 have to do with -- with the bottom line in some cases or
20 solvency.

21 So, I do think that from that standpoint, that it
22 is properly placed because if you moved it, you'd have just kind
23 of a reverse problem of expertise.

24 And I think that I observed, you know, in the
25 '90s, you I had a massive influx of people into managed care,
26 and that overtook the regulator. I think they weren't well
27 positioned for it or anticipating it, and that's when the
28 Legislature, I think, said, you need a much more stepped up

1 program, and the DMHC was -- was put into place.

2 Some seven years, you know, almost eight years
3 later, that industry continues to evolve very rapidly. And you
4 do have some of the same very dedicated, loyal professionals who
5 have been there years ago.

6 I think part of the problem that you have is that
7 you can't get the level of expertise and insight you need into
8 the industry, particularly on the business side, to understand
9 what's going on in board room so that you can better anticipate
10 how that's going to play out in the -- the examination room.
11 And that's, I think, part of the problem, is that -- is that we
12 haven't figured -- that's part of the problem.

13 The other part of it comes to management, will,
14 and commitment, and so on.

15 But I do think there's a -- we have to find a
16 way, and this is what I alluded to earlier on what I'm doing
17 structurally is, I do have, you know, some of that expertise,
18 and have been on the outside, the inside, and so on. And so,
19 I'm trying to do something different.

20 I don't think you've had at this agency a
21 Secretary who actually has had in depth managed care, Knox-Keene
22 expertise before.

23 CHAIRMAN PERATA: That's true.

24 MR. BONNER: In the '90s, you had a change-over
25 in Commissioner every 18 months. So, there's been a lot of
26 issues, I think, that stem from just structure, but also
27 management and leadership and focus.

28 So my commitment is, if I'm fortunate to have

1 three more years in the seat, that we'll actually be --

2 CHAIRMAN PERATA: I thought you were going to
3 say, "If I'm fortunate enough to be confirmed."

4 MR. BONNER: Well, that's implicit in the
5 comment.

6 But is to actually bring an enhanced level of
7 sophistication to that regulatory process, so that there's a
8 greater awareness in the department as to what really is going
9 on.

10 CHAIRMAN PERATA: You have fining authority, do
11 you not?

12 MR. BONNER: Yes.

13 CHAIRMAN PERATA: I recall that there were some
14 rather substantial fines levied?

15 MR. BONNER: Yes.

16 CHAIRMAN PERATA: I think it's a great
17 attention-getter, because big fines, forgetting about money
18 itself, big fines not only affect the bottom line, but they
19 attract attention.

20 I'm pleased that you have that kind of a grasp of
21 this thing. I'm much more persuaded now than I was in the
22 previous questions that you were answering.

23 But the thing is, we've got to keep our minds on
24 when people are getting jammed, or when there are practices
25 going on, all the stuff, you'll never get -- I say this
26 respectfully -- you'll never get enough people working in state
27 government who will have the fire power that they can pay on the
28 outside to lawyers and accountants that tell you that three and

1 three is nine, and yell at you if you don't believe it.

2 So for us, it's got to be using what we have.

3 You've got a great mallet with that fine thing. I mean, if I
4 had one thing that I'm missing in my little quiver, it would be
5 to be able to go around and fine people. Because if you fine
6 somebody \$9 million, all of a sudden the public says, "Jeez,
7 there must be something wrong."

8 So get out there and fine some more people, man.

9 [Laughter.]

10 . CHAIRMAN PERATA: Do you have enough now, or do
11 you want some more? I have a lot more stuff here.

12 MR. BONNER: Did you want any comment on any of
13 the other questions? I'm happy to address any of the issues
14 you've identified.

15 CHAIRMAN PERATA: No, I'm a politician. I just
16 want to talk. I don't want to listen.

17 [Laughter.]

18 MR. BONNER: In fact, I was going to ask you if
19 you had another cookie? I would love to have whatever it is you
20 had during the break.

21 CHAIRMAN PERATA: You stop upstairs, we'll have
22 wine.

23 You can respond on close, but there are some
24 people who have been waiting here to speak.

25 Anyone to testify in favor, or want to speak in
26 favor of Mr. Bonner?

27 He also sat way in back. He must be a classmate.

28 MR. HAMM: I'm Jon Hamm. I'm the CEO of the

1 California Association of Highway Patrolmen.

2 I've had the pleasure of working with Mr. Bonner.

3 Thank you for the opportunity, Members, to be
4 able to speak.

5 I've had the pleasure of working with Mr. Bonner
6 for the last several months. We are responsible for one of
7 those low profile agencies that he oversees. And we found -- we
8 have found Mr. Bonner to be very intelligent, very thoughtful in
9 his process, and he's had some issues that he's had to deal with
10 within our agency. And I think we have found him to be very --
11 he solicited our information. He came to us and wanted to know
12 what rank and file thought, what CHP officers thought. And we
13 have found him to be very easy to work with.

14 And frankly, my only question would have been to
15 him, why is he taking a state job? I think he could do a lot
16 better.

17 CHAIRMAN PERATA: If he was a race horse, we'd be
18 testing him for Lasix; you're right.

19 [Laughter.]

20 MR. HAMM: Anyway, we are privileged to have
21 worked with him and support his confirmation. Thank you.

22 CHAIRMAN PERATA: Thank you.

23 MR. HAMM: By the way, I think there should be
24 term limits for CEO unions, because I understand everything
25 you're saying.

26 CHAIRMAN PERATA: Isn't that pathetic?

27 Anyone else? Any opposition?

28 Good afternoon.

1 MR. KYSOR: Good afternoon, everybody.

2 Mr. Chair, I really appreciated your comments and
3 sensitivity on the issue. By the way, I was co-sponsor of that
4 bill.

5 CHAIRMAN PERATA: You have to give us your name.

6 MR. KYSOR: Dan Kysor. I'm with the California
7 Council of the Blind. We're the largest consumer organization
8 in California of blind, visually impaired individuals. We have
9 affiliate from Eureka to San Diego.

10 And I'm here today with great -- with great
11 reluctance that we have to -- I'm here on behalf of the Council
12 to oppose the confirmation of Mr. Bonner as Secretary of the
13 Business, Transportation and Housing Agency.

14 I say this because it's not usually our practice
15 to come before to oppose the administration's nominees before
16 this body unless it's really critical or egregious. In this
17 case, we think it's egregious, and that's why we're here.

18 To seek to strike down the Americans with
19 Disabilities Act as applied to states and local governments, Mr.
20 Bonner and the Schwarzenegger administration have taken a
21 position that places Californians as a -- California as leader
22 in the movement against the rights of those people with
23 disabilities.

24 Instead of working to make this state as
25 inclusive as possible, Mr. Bonner is doing what he can to ride
26 rough shod over the rights of the disability community.

27 We were forced to take this position only after
28 personally meeting with Mr. Bonner and urging him to reconsider

1 this -- this abominable action. This we do -- this we do not --
2 I'm sorry. I'm a little nervous. This we would not -- he would
3 not even consider that request that he withdraw.

4 It is true that this position has been taken as
5 part of the state's defense by Caltrans against this lawsuit;
6 however we are not opposing Mr. Bonner because that department
7 is defending the suit, even though we believe Caltrans has been
8 failing to live up to its legal obligations for more than 20
9 years.

10 We are opposing him because if the suit is
11 successful, his challenge to the ADA could totally destroy the
12 rights of those people with disabilities. An official of Mr.
13 Bonner's rank who shows such complete insensitivity to the
14 rights of others has, we think, offset his right to serve in
15 such a capacity.

16 Thus, on behalf of the Council, we urge you to
17 oppose his nomination.

18 Thank you. His confirmation.

19 CHAIRMAN PERATA: Thank you.

20 MS. MCPARTLAND: Good afternoon. My name is Pat
21 McPartland, and I'm representing the Association of California
22 State Employees with Disabilities, formerly known as the
23 Disabled in State Service. We just recently changed our name.

24 I'm here today to ask for your help. The
25 disability community is having a difficult time with Caltrans as
26 far as getting them to understand and respond to our needs for
27 accessibility. And this has resulted a lawsuit, as you know.

28 And I do appreciate Senator Perata's remarks

1 about trying to get that resolved. And I also appreciate you
2 authoring SB 1760, which you referred to. I worked on that
3 also.

4 But in this latest issue, Caltrans has filed a
5 motion in the lawsuit that violates previous agreements that we
6 had had with the Davis administration and which attacks the
7 foundations of the Americans with Disabilities Act.

8 We really need your help today to get them to
9 reverse themselves on this and to get more focused on helping us
10 gain the accessibility.

11 As Secretary of the Business, Transportation and
12 Housing Agency, Mr. Bonner has the power to change this, but we
13 are having a hard time getting him to take any action.

14 The motion that Caltrans lawyers have filed
15 asserts that the ADA doesn't apply because Title 2 violates the
16 state's sovereign immunity rights under the Eleventh Amendment
17 in allowing private suits. In other words, they're saying it's
18 unconstitutional.

19 This is the most important Civil Rights Act
20 protecting people with disabilities in the United, States and
21 they're saying it's unconstitutional. And we're having a
22 really hard time making people understand why that's a problem.

23 The question has been asked why we need to be
24 able to sue under the ADA, considering that pretty much the same
25 protections are offered under California law. And I would
26 answer that by saying that it's a matter of political
27 philosophy. California has always been a leader in advocating
28 for the rights of people with disabilities. Attacking the ADA

1 in this way, in a national forum, is a major reversal, and it's
2 an embarrassment to the California disability community. It's
3 also a knife in the back of people with disabilities in other
4 states who rely on the ADA because they don't have strong laws
5 in their own state.

6 We also need the ADA in California because while
7 the California laws do seem strong, we can't know if they're as
8 strong as the ADA unless we are able to test both.

9 The sovereign immunity argument is a state's
10 right argument, and it's well known that historically, state's
11 rights arguments have not been good for civil rights, and it
12 won't be good for civil rights in this case either.

13 It's also implied that this is a done thing as
14 far as the Federal Supreme Court is concerned, but it is not a
15 done thing. The current Supreme Court is very states rights
16 oriented, it's true, and they have made some rulings that are
17 bad for the ADA. But they've also made some that are good, like
18 the Lane decision, and they have tended to make rulings that are
19 very narrow and limited in their scope.

20 This case, unfortunately, has the potential to
21 break new ground in a way that would be bad. We really need
22 your help today. We ask that you please hold off on confirming
23 Mr. Bonner until he has had a chance to instruct the Caltrans
24 lawyers to withdraw the sovereign immunity argument, and to sit
25 down with the plaintiffs to come to a settlement that gives us
26 the accessibility the law provides. And when he's done that, to
27 come back here for reconsideration.

28 We hope that you can help us with this. Thank

1 you.

2 CHAIRMAN PERATA: Thank you.

3 MS. WILLIAMS: Yes, Chairman Perata and Senators,
4 I'm Laura Williams. I'm President of Californians for
5 Disability Rights.

6 And I, too, am here to ask for your help in
7 preserving the civil rights of persons with disabilities.

8 It is unconscionable that a state agency would
9 seek to hide behind the doctrine of sovereign immunity so that
10 taxpayers have no redress, no legal recourse to get a state
11 agency to abide by the very laws that either the state or the
12 federal government have placed before them. It's just
13 unconscionable that a state agency would do so.

14 And again, Senator Perata, CDR was also a
15 co-sponsor of your sovereign immunity waiver bill, and we were
16 distressed that that was vetoed, because we wouldn't be here
17 today if that were so. But unfortunately we are here.

18 But there are several other issues that, for one
19 thing, I heard you say that you don't -- that Caltrans is not
20 claiming the ADA is unconstitutional, yet here is the filing
21 that says that they have abrogated their authority under both
22 the Eleventh and the Fourteenth Amendments. That is stating
23 that the ADA is unconstitutional and does not apply to you as a
24 state agency. There are no clearer words.

25 This filing is the one that must be withdrawn so
26 that we can go forward, because if there -- if there is no
27 hearing, there is no justice. And by hiding behind sovereign
28 immunity, the sovereign immunity doctrine, there is no hearing.

1 We have no legal recourse, and we can -- it takes all of our
2 civil rights and make them hollow words that have no meaning,
3 that we have no way to implement or enforce.

4 It is just unconscionable that a state agency in
5 California, like Caltrans, would seek to damage the civil rights
6 of persons with disabilities in this manner.

7 It is also a very bad argument to say that the
8 federal government should not be imposing these standards.
9 These are civil rights laws. If the federal government had not
10 stepped in for civil rights, there would not be a Civil Rights
11 Act of 1964, and many people would not be here today before us
12 because there would have been no societal change. It's not good
13 enough for people to say, "We support the ADA. We support the
14 rights of persons with disabilities," if you don't follow
15 through with the change in society that brings about that
16 change.

17 And that change for Caltrans is the physical
18 reality: We need sidewalks that are safe for us to travel on;
19 we need detectable warnings that make it safe for Mr. Kysor to
20 cross the railroad tracks here in Sacramento and elsewhere; we
21 need curb cuts that allow us to travel on sidewalks instead of
22 in the streets. We need those things, and it's been 20 years --
23 well, 35 years under state law, and 18 years under the Federal
24 ADA. And we still don't have those safeties and those
25 protections.

26 And that's why we are here today saying, we ask
27 this body to withhold and reconsider later, after this filing
28 has gone away. Because once this filing has gone away that

1 challenges the ADA and seeks to hide behind the sovereign
2 immunity doctrine, then we can move forward to get to the actual
3 meat-and-potatoes of gaining the access, gaining the safety, and
4 gaining our civil rights, and retaining and preserving the civil
5 rights of every Californian with disabilities, and that's 6
6 million people.

7 Thank you very much.

8 CHAIRMAN PERATA: Thank you.

9 Ms. Capell.

10 MS. CAPELL: Mr. Chair and Members, Beth Capell
11 on behalf of Health Access California.

12 We're not here in opposition to Mr. Bonner's
13 confirmation, but we have a number of concerns that we wish to
14 bring to the attention of the Committee and Mr. Bonner. And we
15 appreciate the opportunity to do so. We also appreciate that a
16 number of the of the Committee have already raised some of those
17 concerns.

18 With respect to the ability of the Department of
19 Managed Health Care to fine HMOs, which certainly is a power we
20 are pleased that they have, the \$9 million punitive damage award
21 was made by an arbitrator, not by the Department. The
22 Department's fines have been substantially more modest,
23 especially when you consider that we're dealing with an industry
24 that has a revenue of about 70 or 80 billion dollars a year.
25 So, a fine even of a million dollars is not -- is somewhat
26 modest up against an industry of that magnitude.

27 We will -- I will say that we hope the Department
28 will be more energetic on the matter of rescission. We also

1 look forward to working with the Legislature and the Governor on
2 a legislative solution on that, because this cuts across not
3 only the Department of Managed Health Care, but the Department
4 of Insurance. So, we do believe it will require legislative
5 action to fully resolve this problem.

6 But I want to turn Committee's attention.
7 Rescission has been in the newspapers, as has been patient
8 dumping, and those are terrible wrongs. There are other issues
9 at the Department, but those are wrongs that affect tens of
10 thousands of people or, in some cases, as wrong as the patient
11 dumping that Senator Cedillo refers to, some dozens of people,
12 not millions of people.

13 There are other issues the Department of Managed
14 Health Care deal with that literally affect millions of
15 Californians, and I want to turn your attention to three of
16 them, where consistently the Department of Managed Health Care
17 has sided with the regulated industry and against consumers, and
18 has ignored or excluded the voice of consumers in making those
19 determinations, exactly the difficulty that we had with the
20 Department of Corporations during the years of the Wilson
21 administration and earlier.

22 On timely access, Health Access sponsored
23 legislation beginning in 1997 to make sure that people could
24 actually get to see a doctor when they needed to. Legislation
25 was signed into law in 2002. There were numerous regulation
26 packages proposed since then. Every one of them proposed
27 specific time elapse standards: 24 hours to get an urgent
28 appointment; 7 days, 10 days to get a nonurgent appointment; 15

1 minutes or 30 minutes to get through on the phone to get
2 screened or triaged.

3 In December of 2007, after four or five, or
4 perhaps more regulation packages -- even I lose track as the
5 years go by -- the Department of Managed Health Care pulled back
6 those regulations and instead proposed regulations that would
7 allow each individual HMO to decide what counts as timely
8 access, exactly inadequate approach that has been -- has failed
9 California consumers for the last 30 years.

10 We understand that those regulations have been
11 kicked back to the Department. We're not quite sure exactly
12 why. We are pleased that we will have an opportunity to revisit
13 that, but if the Department's attitude is as it has been on
14 other issues, we are not -- we bring this concern to you in
15 hopes that you may help us to open the door to consumers at the
16 Department.

17 Two other issues. I know other Members of this
18 Committee raised the issue with respect to language access. It
19 is the law in California that HMOs have to provide access to
20 physicians and hospitals in the language that Californians
21 speak, whatever that may be.

22 But it doesn't do consumers much good if they
23 don't know they have that right.

24 We asked when the regulations were developed that
25 they include clear notice to consumers about the availability of
26 interpreters. The Department told us, "Oh, we don't need that
27 in the regulations. We'll do it in implementation."

28 When we approached them in implementation with a

1 draft notice not only in English but nine other languages, they
2 told us not to worry, we've deferred it to the industry
3 collaborative effort that consists of providers and plans, the
4 very providers and plans that had opposed providing access to
5 interpreters.

6 The final point, and this came to our attention
7 in the last few weeks, the Department has proposed draft
8 regulations to regulate discount cards.

9 You may not be familiar with these. These are
10 cards where you pay a fee every month, and you get an alleged
11 discount on an alleged network of providers. And I use
12 "alleged" because, having spent a number of years on legislation
13 in this area, we've never been able to determine what the price of
14 anything is in health care, nor do the regulations actually
15 provide for real networks of providers.

16 If the Director had bothered to consult with
17 any consumer organization, she would have found we had a long
18 history of believing that the proposed regulations were
19 inadequate. Instead, as she said in her e-mail to us, which we
20 would be happy to share with the Members of this Committee, she
21 had developed the regulations in consultation with the industry
22 she proposed to regulate.

23 To us, this is all the same pattern. This is
24 working with the regulated industry and ignoring consumers.

25 And we wish -- appreciate the opportunity to
26 bring these issues to your attention, and we look forward to
27 working with Mr. Bonner on them.

28 CHAIRMAN PERATA: Thank you.

1 MS. LANDSBERG: Mr. Chair and Members, Elizabeth
2 Landsberg with the Western Center on Law and Poverty.

3 These issues have been well addressed, but we,
4 too, have significant concerns about the handling by the
5 Department of Managed Health Care of a number of regulation
6 packages.

7 We appreciate the questions by Senator Padilla
8 and Senator Ashburn and Senator Perata on these issues.

9 Ms. Capell has done a thorough job of outlining
10 the concerns, but we do share the concern that there seems to be
11 trend by the Department of ignoring consumer concerns and very
12 much deferring to the industry again that they are charged with
13 regulating, and to turn over regulations and allow plans to
14 decide what's timely seems an obvious violation.

15 Western Center was one of the co-authors of SB
16 853 by Senator Escutia on language access. Consumers need to
17 know what is -- when should they be able to expect to get an
18 appointment. How are consumers supposed to know that they have
19 the right to an interpreter under California and federal law?

20 So, we're very concerned about the Department's
21 recent behavior toward consumers and do look forward to working
22 with Mr. Bonner on this.

23 Appreciate the Committee's attention. Thank you.

24 CHAIRMAN PERATA: Thank you.

25 MR. SKAFF: Chairman Perata and Members of the
26 Committee, my name is Richard Skaff.

27 I'm embarrassed to say I represent a small
28 organization. I retired from the City of San Francisco in 2004

1 and started a 501(c)(3) nonprofit by the name of Designing
2 Accessible Communities. And I do work with both public and
3 private organizations, training -- code and regulatory training
4 -- as I did when I was with the City of San Francisco, related
5 to access for people with disabilities.

6 I work with manufacturers of architectural
7 products in development of those products to make sure that they
8 comply. And I work with regulatory agencies, like the State
9 Architect's Office.

10 And on March 5th, you're going to be again seeing
11 Chief Dargan. I worked with Chief Dargan on fire-related
12 emergency evacuation issues for the state, and on national code
13 and regulatory committees.

14 I didn't put on my "Want to Speak" card oppose or
15 support Mr. Bonner, because I just met Mr. Bonner today. I was
16 not part of the meeting a couple of weeks ago.

17 But I did meet Mr. Bonner when he walked in the
18 room today, and I was a bit concerned because I -- I raised a
19 number of the issues that were raised today by you, Senator
20 Perata, and members of the disability community, and when I had
21 finished my comments and I asked Mr. Bonner what his thoughts
22 were, and how long -- you know, what is happening and how -- why
23 is it it's gone this far, I was told by Mr. Bonner that he's
24 only known about this for the last three weeks.

25 And to not put you on the spot, Senator Ashburn,
26 but you raised the same issues with the health care related
27 issues, which, if I may go off subject for a moment, I want to
28 say, I've been a member of Kaiser for 40 years, and I must say,

1 they've at least tried to respond to the language issue with
2 providing sign lang -- providing language interpreters. In
3 fact, I'm doing training for Kaiser, because they failed in
4 their access requirements. But they have posted at every single
5 facility a list of probably 30 languages that they will provide
6 sign lang -- provide language interpreters for.

7 But the one they failed to include, sign
8 language. We don't have a clear definition for people with
9 disabilities, once again, on the issues that we may need if
10 we're deaf.

11 We have an aging population that by the year
12 2020, we have an expectation based on Census Bureau reviews and
13 questions that our population over 65 will be in the area
14 between 30 and 50 percent of the population in California and
15 across the country.

16 As we age, the opportunity for people to have
17 some type of disabling condition occur increases exponentially.
18 I'm hoping none of you have to face that, but the fact is, as
19 people age, the possibility of losing hearing, losing vision,
20 and losing mobility is real.

21 And here we have if not the largest, almost the
22 largest agency in the State of California that -- I can say this
23 from personal experience, working with the City of San
24 Francisco -- has not met the mandate. And the mandate has been
25 since 1976. Any agency receiving federal funds has been
26 required since 1976 to first do a transition plan to analyze all
27 their facilities to determine what complied and what didn't.
28 Because they were receiving federal funds, they had to be

1 accessible to people with disabilities.

2 Caltrans never did that plan. The fact is, they
3 are consistent in doing projects that aren't in compliance with
4 California code as well as the Americans with Disabilities Act.

5 On the way home from San Francisco -- I live in
6 Mill Valley, California, north of the Golden Gate Bridge -- I
7 stopped a very beautiful location. The north end of the Golden
8 Gate Bridge has a vista point called Bauer Point that many of
9 you may have stopped at from time to time. Caltrans spent, I
10 believe, \$15 million in doing a major remodel of that site.

11 Well, I found at that visit approximately 30
12 pages worth of access code violations. Between 250 and \$500,000
13 later, Caltrans had to redo the work that they had done to
14 remodel that vista point. And when we did the final site review
15 to determine what was done, there were still violations.

16 The point being that here, Mr. Bonner once again
17 is saying that he didn't know about this.

18 Mr. Bonner shouldn't be -- Secretary Bonner
19 should not be managing on a day-to-day basis the departments
20 that he had under his authority, but he certainly should be
21 sensitive and be aware of the issues, especially a lawsuit.
22 These things are his responsibility, to have his managers keep
23 him informed about this. Mr. Travis, apparently, has not kept
24 Secretary Bonner aware of the issues. I'd say that's a problem.

25 I would hope that you would take the suggestion
26 that has been given, that Secretary Bonner's confirmation be
27 held off temporarily. I don't believe Mr. Bonner's incapable
28 of doing his job. I believe he is capable. I believe he's a

1 very intelligent man.

2 But I believe Mr. Bonner needs to take a
3 responsibility here and take control of the agencies under his
4 -- the departments under his control and correct the problems
5 that are at hand.

6 In my case, I'm asking that he take action
7 immediately on the Caltrans lawsuit. And in his case, I would
8 ask that this Committee hold off on their decision and give him
9 an opportunity to show that he can be a leader and manage the
10 agency appropriately.

11 Thank you.

12 CHAIRMAN PERATA: Thank you, sir.

13 MS. TERRY: My name is Terelle Terry, and I'm
14 representing the Gray Panthers, which is a nation-wide
15 organization. I have been a delegate to the national convention
16 and will be a delegate again this fall.

17 I did meet with Mr. Bonner, and we had a
18 conversation. There was a letter memorializing it, which was
19 kind of confused, but that's all right.

20 What I asked for when I came to the office was
21 the letter from the Governor or a Memo of Understanding, or some
22 type of transmittal from the Governor to Mr. Bonner, or before
23 he even got there, to Caltrans to provide the basis for this
24 response.

25 Now, I only went to law school for a year, so I
26 can't answer all the legal questions here.

27 But what this says is that Caltrans wasn't
28 accessible, isn't accessible, and isn't going to be accessible,

1 and don't try to make us, which is kind of nasty.

2 But then it does invoke sovereign immunity, and
3 that the Eleventh and Fourteenth Amendments provide that
4 Americans with Disabilities Act is unconstitutional.

5 In the '70s, I was here to help to pass a lot of
6 legislation which led to our going back to Washington for the
7 Americans Disabilities Act. The ADA was born in California.
8 And I grew up in Washington, and it has covered the United
9 States.

10 What this suit says is, I have to liken it to the
11 Dred Scott decision, because what it says is not only won't
12 Californians not have a right to transportation, they will not
13 have a right to housing, to access to businesses. They will not
14 have a right to health care. They will have no rights. And not
15 only does it affect California, it affects the entire United
16 States.

17 This is an enormous hammer, and it's over our
18 heads. Or, if you recall your history, the Sword of Damocles is
19 over our heads. And that's what this suit is.

20 And I certainly agree with Senator Perata. This
21 suit needs to go away. There is no need for it.

22 Having worked on this for 30 years, I know that
23 Caltrans has been asked to be accessible. I did file with
24 Caltrans some years ago because there was no accessible train to
25 San Francisco, to San Jose. They built some inaccessible ones,
26 and I filed at that time. And I was very proud, it helped to
27 develop the Capitol Corridor trains.

28 And I've done a lot of things like that over the

1 years, like building a ramp into the Caltrans building because
2 it was inaccessible. It's just recently been updated to the new
3 code, but I'm proud to say I helped to put first one in.

4 I have no objection to Secretary Bonner. I think
5 he's a fine man.

6 But this suit is iniquitous It is dangerous. It
7 tries to undo every -- I worked all my life for civil rights.
8 I've only worked for disabled rights for the last 30 years, but
9 I do not want to see -- remember, all of you can join our civil
10 rights group, every one of you. It may be tomorrow. It may be
11 never. But the odds are, you'll all be disabled in some way.

12 We're looking for your rights; we're looking for
13 our rights.

14 And again, I agree with you. This suit should go
15 away. Thank you.

16 CHAIRMAN PERATA: Thank you.

17 Anyone further?

18 Well, I would hope to be as articulate as all of
19 you that just spoke, but I do want to summarize.

20 I think if it wasn't clear before, it's pretty
21 clear now that the effect of this lawsuit is far reaching as far
22 as the disabilities community goes. And I would concur that
23 California, for better or for worse, when we act, sometimes
24 other people immediately follow. The implications of whether we
25 want to sit around and parse them or not are pretty staggering.

26 I feel compelled to ask you this. Is this a
27 Horseshoe decision, or is this yours? I don't take much joy in
28 killing you if I'm shooting at the wrong guy.

1 MR. BONNER: May I make a couple quick points in
2 response?

3 CHAIRMAN PERATA: Go ahead.

4 MR. BONNER: Because it will help answer that
5 question as well, I think.

6 The first thing is, you know, I agree that we've
7 all lost if this case goes forward. So, we don't have any
8 disagreement about, you know, about that.

9 And when I met with some of the groups a couple
10 of weeks ago, they did make the same request that they made
11 today, and that was that I immediately direct Caltrans to settle
12 the case and make it go away.

13 And what I said to them then, and what I say now
14 is that -- it goes also to the point about why am I only now
15 hearing this now -- is that you've got this agency, 45,000
16 employees, \$20 billion. I think we have something in excess of
17 3,000 lawsuits pending against the Agency. Probably some of
18 them include ADA allegations.

19 And when you have potentially hundreds of
20 millions, if not billions, of dollars on the line, what I was
21 trying to explain was that I've got an obligation as well to be
22 prudent with taxpayer dollars, and to make sure that we're not
23 acting precipitously in simply directing -- you know,
24 litigation's a serious thing. You've always got different
25 points of view.

26 And so, what I said was no, I didn't feel that I
27 was in a position to just precipitously direct the outcome of
28 the litigation, but that I would inquire and understand the

1 issues better, and which I have done.

2 And I understand that the -- I don't agree that
3 the crux of this turns on the constitutional question. If they
4 thought the statute was unconstitutional, we wouldn't have been
5 investing all the money over the years to comply with it.

6 I think the real issue is what does it take to
7 make the case go away? And as I was alluding to earlier, to
8 answer that question you really have to understand how far
9 behind we are in compliance. What's it going to take to get
10 there in terms of completing the self-evaluation?

11 I have directed Caltrans to expedite that
12 process, which is why we are devoting or asking for some \$7-1/2
13 million more.

14 CHAIRMAN PERATA: Mr. Bonner, let me just
15 interrupt you.

16 That doesn't make any sense to me. First of all,
17 unless I missed my bet, everybody that spoke is a taxpayer.

18 This lawsuit was brought, I guess, to protect the
19 Agency. I don't get it.

20 And it seems to me that the inference I'm getting
21 is, we have this lawsuit because we haven't complied so far, and
22 we don't know what it's going to cost. So, we're going to have
23 a lawsuit to slow it down, or do something. It doesn't make any
24 sense to me. It just doesn't make any sense.

25 Why was this filed?

26 MR. BONNER: I can't answer that question. We
27 didn't file the lawsuit.

28 CHAIRMAN PERATA: What is the defense, I'm sorry?

1 What is the nature of our defense?

2 MR. BONNER: The nature, again, of the defense
3 is, they are raising a question as to whether a federal court
4 can enforce the ADA relative to a State of California agency.
5 So there's no -- I'm not -- we're not denying that they are
6 raising that question.

7 CHAIRMAN PERATA: So, that's the only issue?

8 MR. BONNER: That's the only issue that -- the
9 procedural issue that's at issue here. It doesn't go to the
10 underlying merits of what if they keep the case --

11 CHAIRMAN PERATA: And what would that be?

12 MR. BONNER: What would --

13 CHAIRMAN PERATA: Let's say you lose that one, or
14 whatever, I don't care.

15 I'm interested in the underlying.

16 MR. BONNER: Yeah, whether -- that's why I'm
17 saying the procedural issue to me, the crux of the issue, really
18 is whether you get it back in the right court. Whatever the
19 case is, the question is, what do we need to do as a state to
20 fix the problems that they are concerned with.

21 CHAIRMAN PERATA: Yes.

22 MR. BONNER: And that's where -- why I'm saying
23 that one thing you need to do is assess how far out of
24 compliance we might be.

25 CHAIRMAN PERATA: Now, why would keeping the
26 lawsuit alive have anything to do with making an assessment?

27 MR. BONNER: It may not. What I'm saying is that
28 it's very difficult, and I think imprudent, for me, without

1 having been, you know, involved in the lawsuit that's been
2 pending for over a year, before I got here, to simply in
3 response to a request in this context to short circuit and pull
4 the plug and say, "Hey, settle the lawsuit."

5 That doesn't say -- that doesn't mean to say that
6 at some point in time, that may not be the right thing to do. I
7 think to me, the goal is to get to address the underlying issue
8 and to make the lawsuit unnecessary.

9 And that's why I say, you have to move more
10 quickly to understand what it takes to do that.

11 CHAIRMAN PERATA: I don't want to put this
12 indelicately, but you expire. That doesn't mean you're going to
13 die. You expire a week from tomorrow.

14 So, if we were using this -- by the way, Damocles
15 and I were in high school together.

16 [Laughter.]

17 CHAIRMAN PERATA: But what assurances can you
18 give us that this will be an issue that will not only receive
19 your attention, but that will resolve, be resolved, in the
20 spirit that we would expect, and that is that we're going to
21 comply with the law, and at some point, we're not going to make
22 those mistakes like they did Point Bauer, where they build
23 something and all of a sudden, oops.

24 So, that's really the issue.

25 The reason that you're on the point here is
26 because you're in the position right now.

27 MR. BONNER: I understand.

28 CHAIRMAN PERATA: After next week, then we have

1 to get into, do we cut your budget, you know. We say bad things
2 about your family. Who wants to do that?

3 So, what assurances can we have here right now?

4 MR. BONNER: I would say the best assurance you
5 have, one, is my track record. You know, you haven't heard
6 anybody who's come in to say that they brought something to my
7 attention that hasn't gotten some fair treatment.

8 And that's, you know, the commitment, same
9 commitment I made to this group as well.

10 I alluded earlier to the fact that when I came
11 in, there a number -- there was a great distrust among the
12 environmental community. Same issues, Caltrans, spending, and
13 so on. In fact -- and we've worked hard and addressed many of
14 their issues, and they've submitted a letter of support.

15 We had a union come in today that say -- that
16 pointed out that issues have been identified, and we've worked
17 constructively to address them to their satisfaction.

18 That's why I'm saying that I think this group,
19 you know, typically what happens is, something -- they don't get
20 what they want of the department. They come to the Agency, and
21 then, failing that support, they come here or the Governor's
22 Office.

23 I don't know the history of this case, as to why
24 that didn't happen, but my first contact with this group was in
25 the context of their opposition to the confirmation at this
26 point, close in time. And that's disappointing to me, and I
27 wish we were here talking about -- you know, evaluating what I
28 failed to do or not do, you know, specifically.

1 But that's the commitment I make, is the same
2 commitment I've made to all the other stakeholders. And what
3 I've said here repeatedly is that we want the case to go away.
4 I'm pushing very hard to make sure that we know how we can do it
5 responsibly, meaning, let's understand how far out of whack we
6 are and have that conversation.

7 So, that's the assurance I've made.

8 And again, I would just say that if you look at
9 my record, I think it bears out that I've been fair and
10 balanced, and that's what you would expect to see here as well.

11 CHAIRMAN PERATA: Well, I will say that over the
12 year, and having dealt with you personally and then watched
13 what's going on, I always thought Will Kempton was a fabulous
14 administrator. I think it takes somebody that's fairly strong
15 to allow a good administrator his rein, and you've done that.
16 So, I've got no quarrel with the competency of purpose and skill
17 that you've displayed. I think we're fortunate to have people
18 like you doing this. You're another in the line of a number of
19 important positions that the Governor's appointed, people who
20 are quite qualified.

21 And I'm not making this a contingent thing at
22 all. This is a big issue, obviously. It's a big issue to a lot
23 of us.

24 I could join the Gray Panthers now. Please, God,
25 I don't have to join anybody else's organization.

26 But this is really one of those "But for the
27 grace of God" situations.

28 And I just go back to the point that we pass a

1 law that deals with sexual predators, and we're all over it at
2 disproportionately high costs, and no one questions that.

3 This, we have to struggle with and figure out how
4 much we can apportion. It's just not right. It gives
5 government a bad name.

6 And none of us here, Republicans or Democrats,
7 male or female, none of us believe that this is an issue that is
8 anything -- it goes to the heart of what this country's about.

9 So, I'm prepared to move you to the Floor and to
10 work closely with you on this. I would like this to be resolved
11 sooner than later. And for me, soon is now by months. I figure
12 we'll be engaged throughout the summer here. We won't be going
13 on any breaks.

14 They're going to their convention, but for the
15 Democrats there's nothing.

16 So, we would be very happy to do whatever we can
17 to further this along to make it go away.

18 MR. BONNER: Thank you.

19 MS. McPARTLAND [FROM THE AUDIENCE]: May I
20 comment?

21 CHAIRMAN PERATA: Come on, what the hell. We're
22 among friends.

23 MS. McPARTLAND: I'll make it quick.

24 I'm Pat McPartland.

25 This lawsuit has been around for -- I'm not sure
26 how long, at least a year or so.

27 The motion that we're most upset about was only
28 filed very recently, and that is the motion to overturn the

1 lawsuit on the grounds of the sovereign immunity and the
2 constitutional issue.

3 CHAIRMAN PERATA: The Dred Scott position.

4 MS. McPARTLAND: If Mr. Bonner would get the
5 Caltrans attorneys to withdraw that motion and argue the case on
6 its merits as far as whether they've complied with the
7 accessibility requirements of the law, we would be very
8 gratified by that.

9 You know, reasonable people can disagree on the
10 specifics of the accessibility portions, but the constitutional
11 attack is really upsetting.

12 CHAIRMAN PERATA: Point taken. That's the issue.

13 MS. McPARTLAND: Yes.

14 CHAIRMAN PERATA: That's very helpful.

15 MS. McPARTLAND: Okay, thank you.

16 CHAIRMAN PERATA: That's very helpful, thank you.

17 So, we have motion to approve.

18 Yes, Senator Cedillo.

19 SENATOR CEDILLO: I just concur and attach myself
20 to your comments and all the comments. Although, I differ with
21 you.

22 I don't think that's sufficient. I don't think
23 it's necessary. That's a procedural question that's being used
24 to delay or defer, and I think as Senator Padilla said, health
25 care delayed is health care denied.

26 I think it applies to access. That access
27 delayed is access denied. And this shouldn't be in court.

28 So, we don't need to argue this on the merit.

1 The law is clear. It's well established.

2 The only question is our compliance. You've
3 acknowledged compliance has been insufficient. A million
4 dollars, 50 years to get there is wholly inappropriate.

5 We would hate to try to intervene and use the
6 budget process, and try to dictate policy. You're very talented
7 and capable.

8 But it really is a lot simpler than that. It's
9 simply saying, this is not the right thing. I will do the right
10 thing, and this case will be resolved.

11 We have had too many governors and other people
12 worry about the results of a case to the point that then we end
13 up losing millions and millions of dollars.

14 We are duty-bound to comply. And all of us
15 should use all of resources and talents, and you have an
16 abundance of them, to bring us into the compliance with the Act.
17 It's that simple for me. I encourage you to do that.

18 And the second point was, on the question of
19 language access, this is really an absurdity; right? You don't
20 know the language of the facility that you go to. You have a
21 right to know the language, but you don't know you have that
22 right unless somebody communicates that to you. Basic notice.
23 Basic due process right that you have.

24 If you don't know it, then how can you exercise
25 it? If you can't exercise it, it doesn't exist.

26 So if there's reticence, or reluctance, or an
27 inability, or a pure denial of duty here from the HMOs to comply
28 is unacceptable. I mean, it's the law. The Escutia law is the

1 Escutia law.

2 People have a right to receive these services in
3 the language that they speak, and they have to know that. If
4 they don't know that, they can't -- it eliminates that right.

5 CHAIRMAN PERATA: I can assure you, you don't
6 want her coming back here, talking to you.

7 [Laughter.]

8 MR. BONNER: That won't be necessary.

9 CHAIRMAN PERATA: I don't want to extend this any
10 further, but I'm reminded that our good friend colleague,
11 Senator McClintock, often stands up on the Floor and rails
12 against why government is spending so much money today that it
13 didn't spend in the covered wagons. This is a perfect example.

14 The whole ADA law in its application is
15 expensive. But these pesky people with disabilities want to be
16 treated like they're real Americans, you know.

17 [Laughter.]

18 CHAIRMAN PERATA: And so, it just costs a lot
19 more now, and that's just the way it is.

20 I'm done. Call the roll.

21 SECRETARY WEBB: Cedillo.

22 SENATOR CEDILLO: Aye.

23 SECRETARY WEBB: Cedillo Aye. Dutton.

24 SENATOR DUTTON: Aye.

25 SECRETARY WEBB: Dutton Aye. Padilla.

26 SENATOR PADILLA: Aye.

27 SECRETARY WEBB: Padilla Aye. Ashburn.

28 SENATOR ASHBURN: Aye.

1 SECRETARY WEBB: Ashburn Aye. Perata.
2 CHAIRMAN PERATA: Aye.
3 SECRETARY WEBB: Perata Aye. Five to zero.
4 CHAIRMAN PERATA: Thank you, sir.
5 MR. BONNER: Thank you, and thank you all.
6

7 [Thereupon this portion of the
8 Senate Rules Committee hearing
9 was terminated at approximately
10 4:26 P.M.]

11 --ooOoo--
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State
of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

day of February, 2008.

EVELYN J. MIZAK
Shorthand Reporter

1
2
3
APPENDIX
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CALIFORNIA STATE SENATE RULES COMMITTEE

The Honorable Don Perata, Chair

Elaine D. Bush, Chief Deputy Director

Department of Mental Health

Senate Rules Committee

CONFIRMATION HEARING QUESTIONS

DEC. 14 2007

Description of Goals

Appointments

1. *What do you hope to accomplish during your tenure as chief deputy director of DMH? How will you accomplish these goals and measure your success?*

Throughout my 23-year career as a public servant with the State of California, I have enjoyed the challenges of successfully navigating and driving positive outcomes of complex governmental organizations, especially when the organizations are charged with caring for our most vulnerable citizens.

People who have worked with me will tell you that my concern for the poor, sick, addicted, socially and economically vulnerable is matched by my demand for a business model, efficient, performance-measured, and strategically coordinated organization. My career has been defined by a "fix-it" mentality for public organizations to more effectively define and implement policy, institute a practice and culture of fiscal responsibility, and provide focus toward customer-centered services. At the core of this business service model are the principles of integrity, transparency, and shared values, supported by strong external collaboration and smart partnerships.

During my tenure as the Chief Deputy Director for the Department of Mental Health (DMH) I plan to steer the Department on a course of commitment, responsibility and accountability to the people of California, particularly those individuals who are in need of mental health services.

As the "chief operating officer" for managing the day-to-day operations of one of the largest departments in California state government, I am dedicated to making the Department of Mental Health a public sector model for service delivery, organizational efficiency, business effectiveness, and operational transparency.

I will work to create an organization that can strategically foresee and respond to change---an organization that is proactive rather than reactive. Due in part to voter approval of the California Mental Health Services Act (Proposition 63) and the Sexual Predator Punishment and Control Act (Jessica's Law / Proposition 83), DMH's policy responsibilities, fiscal oversight, administrative duties, and degree of stakeholder inclusion have grown exponentially. This growth has placed pressure on aging technology, strained financial systems, and taxed our personnel resources. The Department must skillfully design and build an effective, reliable and sound

infrastructure to address the pressures being placed on our delivery systems.

Upon receiving the honor to serve as Chief Deputy, I established some short-term goals, which were to:

- conduct both external and internal assessments of the Department's performance;
- establish strategic partnerships with county providers and other key constituent leaders; and
- recruit a leadership and management team with strong state government and business operations experience.

I established a 90-Day Action Plan (April to June 2007) which resulted in the following initiatives:

- 1) Met with Legislators and staff consultants to garner their assessment of the Department's performance and suggested areas for improvement;
- 2) Established workgroups and forums as an ongoing mechanism to get input from the counties and leadership of the California Mental Health Directors Association (CMHDA);
- 3) Evaluated and initiated reforms relative to DMH fiscal systems in an effort to improve the quality, responsiveness and customer service to the entities delivering mental health services;
- 4) Participated in State Hospital Governing Body meetings, field tours, and briefings from hospital management;
- 5) Instituted Medi-Cal and Mental Health Services Workgroup meetings to encourage state/county/stakeholder collaboration and problem identification and resolution; and
- 6) Contracted with the Department of Finance Office (DOF) State Audits and Evaluations (OSAE) to conduct reviews and provide recommendations on fiscal administration issues.

During the following six months (July 2007- December 2007), we embarked on additional organizational and program reforms including:

- 1) restructured the Department to organizationally reflect a more efficient and effective business model;

- 2) redesigned the DMH contract process and provided orientation and training to contract managers and line staff;
- 3) recruited, interviewed, and hired executives for Communications and External Affairs; Administrative and Fiscal Services; Community Services; and Information Technology;
- 4) participated in collaborative forums with CMHDA, providers, the Oversight and Accountability Commission, the Mental Health Planning Council and other key mental health services partners;
- 5) reinforced and developed our business and professional partnership with the Department of Health Care Services (DHCS) to address information technology, claims processing, and regulatory oversight; and
- 6) directed the field and headquarter response to the 2007 Southern California Wildfires.

There are several important indicators that will help to measure my success as Chief Deputy for the Department of Mental Health, including:

- Based upon a new 2008 strategic and business plan, DMH will have definable, measurable goals and objectives by which to measure progress;
- State Hospitals will make measurable progress toward the consent decree order in meeting compliance and the Civil Rights of Institutionalized Person Act (CRIPA) standards;
- Successful implementation of Sexual Predator Punishment and Control Act (Jessica's Law / Proposition 83);
- Successful implementation of the Mental Health Services Act (Proposition 63);
- Claims payment timeliness, accuracy, and process will improve to assist the counties in providing services;
- DMH employee recruitment and retention will improve to reduce a persistent vacancy rate; and
- External oversight organizations, business partners, and state and local officials will have confidence in DMH and will support DMH in our mission, vision, values and goals.

These are a few indicators that are important to the overall success of DMH, and I

believe that my leadership as Chief Deputy will guide the accomplishment of these goals.

Collaboration, Oversight, and Accountability for Community Mental Health Services

2. *What steps are you taking to assess and improve the department's systems for administrative and fiscal management of EPSDT and other mental health programs?*

Before accepting the privilege of serving as Chief Deputy for the Department of Mental Health (DMH), I was aware that this executive role would be like no other I had previously undertaken, because of the magnitude of public policy and fiscal issues the Department is confronting. Among these critical issues are:

- the implementation of the 2004 Mental Health Services Act (MHSA - Prop. 63) with more than \$2.8 billion personal income tax dollars specifically identified, since the inception of the program, for community mental health services and infrastructure requiring the multifaceted process of developing guidelines;
- the implementation of the 2006 Sexual Predator Punishment and Control Act (Jessica's Law - Prop. 83), which presents challenges for our state hospitals and has implications for public safety;
- the responsibility to help lead five state hospitals, two psychiatric programs and more than 10,000 employees during a time of patient population change to one of predominately forensic patients; and
- the oversight, management and accountability of our State's \$5 billion mental health Medi-Cal carve-out, which provides important services to nearly a half-million children and adults.

Although I recognized the magnitude of this responsibility and management challenges that came with this assignment, I accepted the offer to serve with a commitment to improving the financial management systems delivering on our promise to serve Californians with mental health needs.

Since my first day on the job in March 2007, we have committed thousands of hours to assess the changes necessary to address the challenges associated with the fiscal and administrative management of Early and Periodic Screening Diagnosis and Treatment (EPSDT). As a result, DMH developed a 2007/2008 Medi-Cal Fiscal Services Management Workplan to chart a course for system assessment and problem resolution, and to establish a timeline for reporting and implementation.

From my desk in DMH, I recognized the importance to first conduct thorough assessments to inform long-term improvement strategies throughout the entire system. The following provides a summary of reform-minded strategies we have initiated since March 2007.

- **Internal management review:** DMH contracted for an expansive internal administrative systems review. This management and systems review was designed to identify fiscal programs where improvements could be made, and devise implementation strategies using available resources for those reforms. This review focused on four major functions: accounting; budgets; contracts; and information technology.
- **Map and document claims payment process:** We identified the need to map and document the DMH Short-Doyle Medi-Cal claims payment processing system. This first-time effort revealed a complex labyrinth of systems designed to support the State General Fund (SGF) and Federal Financial Participation (FFP) claims from the counties that involve multiple components of DMH, along with a mix of manual and electronic critical transaction points that involve multiple organizational units/departments.
- **Accounting office process review:** Based on the success of the claims payment processing documentation and mapping work product, we decided to conduct a similar study of our Accounting Office. The Accounting Office is the engine for our fiscal payment processes and payments for Mental Health Plans, legal entities, contractors, and others with whom we do business. DMH management meticulously identified and mapped the payment processes from a desk-to-desk perspective and identified specific staff responsible for each transaction.
- **Office of State Audits and Evaluations:** To support the internal administrative systems and management review, we entered into an inter-agency agreement with the Department of Finance's Office of State Audits and Evaluations (OSAE) to conduct an independent and in-depth review that would help DMH meet the State Financial Integrity & State Managers' Accountability (FISMA -- California Government Code Sections 13400-13407) Act requirements at headquarters and within the state hospital system. OSAE also provided reports for our fiscal forecasting and statistical evaluation functions.

DMH recognizes that our administrative and fiscal services systems and processes need improvement and skillful management. We have conducted thorough assessments and evaluations of our systems and resources. We have recruited the right team of leaders and managers, restructured the organization, and engaged in strategic and business planning with our partners and stakeholders. From these initiatives and many others, we have demonstrated our commitment to enhance our

performance as a fiscal and customer service organization that is sustainable for the State and will provide improved services to California's mental health consumers.

3. *How are you collaborating with county mental health departments to ensure effective and efficient mental health program management systems?*

The California mental health system is critically dependent on the ability of County Mental Health Plans (MHPs), to effectively administer consumer treatment, counseling, and other services. This dependency creates a unique relationship between the Department of Mental Health (DMH) and MHPs. As a result, we set county mental health departments apart from other system stakeholders and consider the counties as "partners."

I believe that collaboration with the MHPs is one of our most productive and active initiatives. We communicate daily with executive representatives of the California Mental Health Directors Association (CMHDA), which represents the interests of MHPs.

In April 2007, DMH provided to the Legislature our Fiscal Services Management Workplan. In this Workplan, DMH and CMHDA committed to joint-sponsorship of a Medi-Cal Mental Health Services Workgroup. This Workgroup has representation from counties, providers, the Department of Health Care Services, the Office of State Audits and Evaluations, consumers, and other mental health services constituencies. The Workgroup has provided a forum for stakeholders to engage the State and counties on important Medi-Cal program and administrative issues.

Creating this transparent and collaborative environment will strengthen California's mental health system. Over the past nine months, we have made tremendous progress and forged stronger communication and understandings about the needs and boundaries of this important inter-governmental relationship. As we update the department's strategic plan, one of our goals is to continue to focus on our business partnerships with our government partners and other stakeholders.

In conclusion, I believe that one of the most promising aspects of the California mental health system is our commitment to state/local collaboration to enhance the lives of our mental health consumers. As Chief Deputy, I am personally committed to ensure that we do our part to collaborate respectfully and successfully.

Mental Health Services Act

4. *Please provide a brief status report on the implementation of MHSA, including major accomplishments in implementing key components of MHSA and plans for components that are not fully implemented. Please include an update on the MHSA Housing program, which will fund the development of permanent supportive housing for persons with mental illness and their families.*

Since the Department of Mental Health (DMH) began receiving Mental Health Services Act tax resources, more than \$2.8 billion has been deposited in the California Mental Health Services Fund. The Department initiated a sequential process for phased implementation of these components with integration completed by fiscal year (FY) 09/10. An extensive stakeholder process was used throughout the implementation of this Act.

- Community Program Planning—The guidelines for county funding requests to support their local stakeholder processes were issued in January 2005. All counties and one city program have requested and received funding which totals \$12.7 million.
- Community Services and Supports—The guidelines to receive the funding for services for individuals with serious mental illness were initially issued in August 2005. Additional funding was made available in December 2006 and October 2007. Plans have been received from 56 counties and one city program, and all but two have received approval. \$712.3 million was distributed through September 30, 2007 with an additional \$573.3 million committed for funding upon approval of local requests.
 - MHSA Housing Program--The application for the MHSA Housing Program is complete. This collaboration among DMH, California Housing and Finance Agency, the OAC, and the counties, initiates a Governor's Executive Order. The first project applications are expected to be submitted by counties in January 2008. A total of \$400 million has been committed to this project.
- Workforce Education and Training—These funds are to improve and expand the public mental health workforce. \$200 million has been committed for local and statewide projects. The guidelines for county requests for planning funding were released in April, 2007 and those for the local workforce initiatives were released in July 2007. Thirty eight counties have requested and been approved for the planning funding. Requests from counties for the balance of the funding are just beginning to be submitted. Most of the statewide projects remain under development and are expected to begin in FY 08/09.
- Prevention and Early Intervention—This component funding is dedicated to providing services aimed at preventing more significant mental health problems. The guidelines for the funding of the local planning process were released in August 2007. 16 counties have requested and been approved for funding. The requirements for the services were released in September 2005. Counties continue to develop this portion of their local plans.
- Capital Facilities and Technological Needs—This component is focused on the infrastructure that will help support the expansion of services. Capital Facilities

funding will be focused on treatment or administrative facilities. The technology portion will focus on moving toward an electronic health record and health information exchange as well as other uses of technology to support the goals of the Act. The guidelines for county funding requests remain under development and are expected to be released in early 2008.

- Innovation—Funding is set aside to continue to improve services. This component is under the earliest stages of development. The guidelines are expected to be issued by the end of this fiscal year.
- Integrated Plan—Development of the guidelines to bring together the above components into an integrated plan has begun. The guidelines are expected by the end of the fiscal year.

In summary, about three-quarters of the funding received by September 2007 in the Mental Health Services Fund has been allocated to the counties in four of the six MHSA components. The majority of the remaining funds are anticipated to be invested this fiscal year with implementation of the Capital Facilities/Technological Needs component and next fiscal year with implementation of the Innovation component.

It is important to emphasize that the MHSA is an organizational, policy, administrative, and fiscal priority for DMH. California voters placed their confidence in DMH and local governments to utilize a special tax on personal incomes of more than \$1 million to support a transformation of community mental health services. It is important to recognize that the over-arching role for DMH is to support the transfer of state income tax resources into the county for the purposes of enhancing local mental health services. If we demonstrate that the MHSA is a successful policy, financial, and governance model, California will have once again set the stage for public sector innovation to improve mental health services and supports.

5. *What major lessons has DMH learned through the first few years of implementing components of MHSA? How is DMH responding to concerns about stakeholder involvement in state and county planning for MHSA and timely review of county plans and allocation of MHSA funds?*

Major lessons learned by DMH: Since the enactment of Proposition 63, the Department has focused on distributing the financial resources to the local level, while being true to the intent of the Mental Health Services Act (MHSA) and accountable to the Administration, Legislature and taxpayers for the process and resources devoted to implementation.

To effectively fulfill our role, the Department embraces basic, guiding principles:

- 1) The design and implementation of effective program and fiscal tracking systems

- 2) To support the counties' role to ensure the success of MHSA
- 3) To be open, transparent, and communicate clearly about each step in the process with stakeholders, oversight agencies (the Oversight and Accountability Commission; the Mental Health Planning Council), and the public
- 4) To remember the purpose of the MHSA – it is about helping people with mental health issues get well and live a better life through the direct involvement of clients and families

The dynamic, quick, and inspirational shift that we have experienced within California's mental health system is all about people. If we can effectively collaborate, and transform the way we do business, we will have succeeded. We have learned:

- The quality of collaboration with our partners and stakeholders drives the quality of system change envisioned by the Act.
- Skillfully executed communication strategies are essential for maintaining collective confidence and trust.
- Maintaining a quality improvement approach is necessary because change can be difficult for stakeholder organizations, communities and government.
- Full stakeholder participation is necessary at the state and local levels to continue to improve the public mental health system. Strategies to engage stakeholders will need to adapt and continue to improve over time to ensure public confidence in the integrity and accountability of the MHSA enhanced services.

Consistent with the need for stakeholder participation, DMH is coordinating with other governmental entities to develop the overall state and local stakeholder processes, including the establishment of roles and responsibilities. Stakeholders will be involved throughout the development of the recommendations.

DMH has modified, with the aim to shorten the timeline for final approval, the process to review county plans. The Oversight and Accountability Commission (OAC) has just approved the new plan review process.

The contract between the State and counties has been redesigned to facilitate more timely distribution of MHSA funds. We are committed to attaining the right balance between faster distribution of funds, and accountability for program management. These multi-year agreements allow for unilateral modification to increase the funding when plan updates are approved. The contract terms have been modified to provide for 75 percent payment at the time of plan approval with the balance paid on submission of required reports.

Stakeholder Concerns and Process Improvement

A cornerstone of the DMH MHSA implementation is the use of a business service model I discussed previously, which includes the principles of integrity, transparency, and shared values, supported by strong external collaboration and smart partnerships.

The stakeholder process for MHSA needs improvement so that those who are not intimately familiar with -- or connected to -- the history of the mental health delivery system, are invited to the discussion. I believe the potential for a new infusion of talent, ideas, and specialized service delivery models will improve the transformation of our mental health system inspired by the MHSA. I am also encouraged by the focus of our Office of Multi-cultural Services staff to ensure that our outreach, education, and communication are expanded to ensure a more inclusive decision making process.

DMH attempts to balance the decision making and financial oversight responsibilities with the expectations of stakeholders, local mental health service providers, oversight agencies, and the public. The pressure to quickly get the dollars into community services must be balanced by the need to ensure a thoughtful, carefully paced, and publicly managed stakeholder process. I believe we can be successful and serve both purposes.

DMH has agreed to conduct an assessment of our current stakeholder process with the California Mental Health Directors Association, OAC, Mental Health Planning Council, providers, local/state mental health advocates, and other interested parties. The assessment will focus on the calendar of activities, public notice and communications about stakeholder involvement and facilitation, public review of documentation and proposals, and distribution of funds and services. We will also be working with stakeholders to ensure that the public better understands the improved outcomes and services delivered through the MHSA.

Mental Health Care for Offender Populations

- 6. *How can DMH provide leadership and collaborate with CDCR and other agencies to address the mental health treatment needs of prison inmates and parolees, as well as persons in local jails and probationers who are under county oversight? Is DMH involved in planning for expanded community mental health services for prison parolees and youth offenders?***

The Administration and Legislature have made it clear through new laws such as the Public Safety and Offender Rehabilitation Service Act (AB 900), that the Department of Mental Health (DMH) already is a collaborative leader in support of prison reform and parolee re-entry into the community. DMH is a statutory appointment and voluntary participant on important policy groups that support community re-entry for youth and adult parolees focused on quality health services and public safety. DMH is a statutory

member of the California Department of Corrections and Rehabilitation (CDCR) Re-entry Advisory Board, California-Rehabilitation Oversight Board and the Council on Mentally Ill Offenders. These boards and councils are opportunities for DMH to assist in the development of partnerships between state departments, the counties and local law enforcement for the successful transition of inmates into the community while addressing public safety concerns. Again, DMH plays a leadership and consultant role on these committees, sharing lessons learned from successful programs.

With few exceptions, the vast majority of inmates and wards will be released to live among the general public. The intergovernmental relationship between the state and local criminal justice and health and human services organizations is critical to maintain public safety, support rehabilitation to prevent recidivism. This return-to-the-community population has an impact on local government, DMH and the California Mental Health Directors Association (CMHDA) work together on a Forensics Committee to ensure that mental health needs are addressed in local communities, including adult jails and juvenile facilities. The Forensics Committee is comprised of DMH and county staff and focuses on and addresses forensic issues such as court commitments and processes, treatment for mentally ill offenders while in the county jail system, and any new legislation that may impact treatment services for mentally ill offenders. In September 2007, The California Institute for Mental Health and DMH sponsored a statewide forum which brought together CDCR Secretary Tilton, DMH, and CMHDA to develop an Action Plan to address re-entry strategies.

Offender Populations

Individuals who are in or have prior involvement with the juvenile justice system or criminal justice system often have serious needs for mental health treatment services. For 12 years, CDCR has been under a federal court order to provide prison inmates with timely access to appropriate levels of mental health treatment. This year the State enacted the Public Safety and Offender Rehabilitation Service Act (AB 900). The facilities and programs developed under the Act will expand mental health treatment services for prison inmates and parolees.

The State plans to create new, secure community re-entry facilities to provide prison inmates close to their release date with rehabilitative and other targeted services, including mental health services they need to return to society.

In addition, the State enacted juvenile justice reforms to downsize the population of state juvenile facilities and send youth offenders with less serious crimes to their home communities for rehabilitation under county oversight. This population may also require mental health services at the community level.

State Hospitals

DMH currently provides inpatient services at each state hospital for CDCR inmates and parolees and operates three programs within CDCR facilities - two for adult inmates at Salinas Valley and Vacaville, and one for youthful offenders. There are expansions underway at both adult facilities in order to increase the number of inmates who receive DMH treatment services. DMH continues to demonstrate leadership in the mental health treatment needs of CDCR inmates and Division of Juvenile Justice wards by working in collaboration with the CDCR management and clinicians in the development of treatment programs, consultation in case conferences and the development of a therapeutic array of services in their treatment facilities.

The Coleman Court has approved a bed plan that requires DMH to provide consultation to CDCR in the activation of a new psychiatric treatment program at California State Prison-Sacramento and then four other programs, including the licensure and Joint Commission Accreditation of these programs. DMH is assisting in all aspects of the activation including the design of the treatment buildings, hiring of the management staff and clinicians, development of the policies and procedures, training for clinical and non-clinical staff, development of the behavioral and treatment programs including admission and discharge processes and performance improvement processes. The goal is for DMH to provide consultation to assist CDCR in the successful operation of inpatient treatment programs and demonstrate to the Coleman Special Master that CDCR is capable of operating a mental health program that meets constitutional standards.

DMH has experience in the development of a continuum of care starting with community prevention efforts, recovery in an inpatient setting such as a state hospital and a successful community re-entry program, the Conditional Release Program (CONREP). The CONREP program has refined screening and referral tools, outpatient readiness evaluations and training programs to sharpen the skills of mental health professionals. CONREP also has a data and evaluation system used to track patient movement and monitor clinical services provided.

In conclusion, the commitment by the State, including DMH, and local governments to ensure that the public safety is enhanced through coordinated and collaborative services for mental health patients returning to the community exists, and is growing stronger through new statutes, policy changes, and opportunities to exchange expertise and perspectives.

7. *How does DMH collaborate with county mental health and probation departments to try to keep youth who have mental health needs from entering the criminal justice system?*

State and local level collaboration to support prevention and education services for youth at-risk, including transition-aged youth (TAY), is an important multi-disciplinary and inter-governmental initiative.

The Department of Mental Health (DMH) has several important mechanisms for working with county behavioral health and criminal/juvenile justice services, primarily through our partnership with the California Mental Health Directors Association (CMHDA) specialized committees, including the Children's System of Care Committee (CSOC). The CSOC works to identify and evaluate positions on federal, state, and local statutory and regulatory developments that directly or indirectly impact children's system of care policy development. Through ongoing participation in the CMHDA committees addressing the service needs of youth and TAY, as well as those committees focused upon the implementation of the MHSA programs, DMH continues to provide direction and assistance to counties. In addition, DMH has continuously supported local training in the area of evidence-based practices for this population. By way of our ongoing participation and support of statewide and regional training forums, DMH is able to infuse new ideas for program development, and lend financial support to specific service needs.

Through MHSA Community Services and Support (CSS) dollars, county plans have identified needs to support 38 children's programs and 50 TAY programs. The MHSA supported housing and employment programs are intended to support family stabilization to prevent homelessness, drug use, violence, and prostitution, with a focus on youth.

DMH continues to participate in the Multi-Association Joint Action Committee (MAJC), whose purpose is to maintain collaborative partnerships with county mental health and probation departments, to improve outcomes for children and youth served by both departments.

DMH administers funds to seven counties that provide services to the juvenile justice population through the federal Substance Abuse and Mental Health Services Administration (SAMHSA) grant.

More than 20,000 children per year receive services from Mental Health Services for Special Education Pupils (AB 3632) funds, a program for children and youth with mental health needs in special education, designed to provide services that will help keep children and youth out of the juvenile justice and protective services systems.

Through its policy and program leadership, DMH supports effective collaboration and service delivery to communities in an effort to prevent at-risk youth who have mental health needs from entering the criminal justice system.

Co-Occurring Disorders

8. *Since the release of “Co-Occurring Disorders Workgroup Final Report” and the co-occurring disorders state action plan, what has DMH, in collaboration with ADP, counties, and other partners, done to promote coordinated treatment for persons with co-occurring substance abuse and mental disorders? How is DMH collaborating with counties to promote integrated mental health and substance abuse services through MHSA-funded programs?*

Currently there are several key areas of focus for Department of Mental Health (DMH) regarding the promotion of integrated behavioral health approaches, and the Mental Health Service Act (MHSA) funded programs are in the forefront of these efforts. Consistent with the intent of the MHSA that individuals receive “whatever it takes” to address their mental health needs, the release of the Community Services and Support funds have provided counties with sufficient funding to develop new programs that offer the full array of mental health treatment to include, when appropriate, the provision of treatments to address co-occurring conditions. DMH has provided both regulatory instruction and ongoing technical assistance through formal training and informal ongoing supports to county program managers in order to ensure that every opportunity for program improvements can be considered by the county staff.

The passage of the MHSA provides the opportunity for DMH to make available increased funding, personnel and other resources to support county mental health programs, including Co-Occurring Disorders (COD) services, and monitor progress toward statewide goals for children, transition age youth, adults, older adults and families.

The Department has been part of the Co-Occurring Joint Action Council (COJAC) Steering Committee, both in participation and funding, since the project began, has presented at several trainings, and participated in numerous conferences calls throughout the past four years to ensure collaborative success. COJAC is a collaboration of DMH and ADP to eliminate barriers to the provision of services to persons with co-occurring disorders of mental illness and substance use and to have ongoing discussions to enhance services for those individuals.

A new COD office within the Department of Alcohol & Drug Programs (ADP) was created for a three year period consistent with annual Budget Act authority using funds from the Mental Health Services Act. We are working with the new COD Office to achieve its purpose by providing for the functions and tasks listed below.

- Assist DMH and ADP to blend their respective services into local programs that will effectively serve persons with COD.
- Assist counties and other providers who are addressing persons with COD or those at high risk of the disorder.
- Recommend workforce development training for counties and other providers addressing COD issues.
- Provide technical assistance by conducting COD related research, collecting and disseminating data.
- Collaborate with the COJAC, DMH, and others in recommending policies, programs and projects addressing COD.
- Provide assistance to policy makers who are providing leadership to the COD State Action Plan for California.

Additional efforts by DMH in the area of COD include the following:

- DMH has set aside more than \$8 million of its annual Substance Abuse and Mental Health Services Administration (SAMHSA) Community Mental Health Block Grant for allocation to counties to support efforts in providing integrated treatment services for adults and youth with COD. Counties submit expenditure plans describing their intended use of these funds for DMH's review and approval, and are monitored by the Department. Currently 55 counties receive funding that supports more than 60 programs throughout the State including programs that provide dual recovery programs for both adults and youth within the community, residential programs, the corrections and juvenile justice systems, and to promote staff development and training.
- DMH sought and received one of SAMHSA's Evidence-Based Practices grants for \$975,000 to: 1) provide training and technical assistance to implement the Integrated Dual Diagnosis Treatment (IDDT) model in eight sites throughout California; 2) evaluate the implementation process and commitment to the IDDT model; and 3) develop the infrastructure to foster statewide implementation of evidence-based practices. The IDDT project funded eight programs in four counties as identified below. The project was developed and submitted to SAMHSA through collaboration with California Institute of Mental Health (CiMH), who contracted with the IDDT trainer and project evaluator.
 1. Alameda (Bonita House & Casa del Sol)
 2. Los Angeles (Hollywood Clinic & South Bay Clinic)
 3. Stanislaus (Turlock Regional Center & West Modesto Regional Center)
 4. Ventura (Conejo Clinic & Oxnard Clinic)

The project began September 2003, with the most recent clinician ratings and data collection completed in July 2007. The final evaluation report was completed in September 2007, and is currently being prepared for submission to SAMHSA and for publication in peer reviewed journals. Trainings have been conducted for providers and county mental health departments. There will be a presentation of the IDDT project and evaluation at the next COJAC meeting in the Los Angeles area on January 16, 2008.

One of the counties under this grant, Ventura County Behavioral Health, was recently awarded the Science and Service Award by SAMHSA in recognition of exemplary implementation of this evidence-based intervention to prevent and treat mental illnesses and substance abuse.

9. *How is DMH collaborating with the California Department of Developmental Services and other partners to address the needs of individuals with developmental disabilities who have a co-occurring mental health disorder?*

The Department of Mental Health (DMH) participates on the Mental Health Task Force (MHTF), meeting jointly with the Department of Developmental Disabilities (DDS), the Association of Regional Center Agencies (ARCA), and the California Mental Health Directors Association (CMHDA) to improve services for persons with developmental disabilities who also have a mental illness. The goal of the Task Force is to develop collaborative relationships between the agencies that provide mental health services to persons with developmental disabilities.

The MHTF is sponsoring training for case managers and middle managers of county mental health departments and regional centers. A previous round of training has already been provided to county government executives. The training focuses on opening communication, developing MOUs and collaborating to provide services to the dually diagnosed population. The training also covers effective treatment models for this population.

State Hospitals

10. *Please provide a brief update on meeting the federal CRIPA consent judgment requirements. What are the key challenges facing the state hospitals as they continue reforms to implement the judgment? What, if any, comments or findings were made by the federal CRIPA evaluation team as a result of its most recent reviews of the state hospitals conducted during 2007?*

In recognition of the Civil Rights of Institutionalized Person Act (CRIPA) Consent Judgment, California has taken the unique and proactive approach to improving care and resolving issues of concern identified by the USDOJ. The terms of the CRIPA

Consent Judgment are time-limited, requiring the Department of Mental Health (DMH) to reach compliance within three years (July 1, 2006 to June 30, 2009) and demonstrate a level of maintenance for an additional two years beyond the 2009 date. Utilization of the Recovery Model in all of the DMH hospitals will allow California to achieve its goals and place the State at the forefront of the national trend in mental health treatment. In 2007, the Court Monitor conducted eight site visits, two at each of the affected hospitals. Each visit by the Court Monitor and his team results in a thorough report (400-500 pages) of all systems issues including clinical treatment services by specific discipline, environment of care, incident management, wellness and recovery planning, integrated team processes, and abuse and neglect investigations. To date, the state hospitals have much of the required structure and systems in place. The continuing reviews deal with monitoring of the implementation of these systems to achieve compliance with the Enhancement Plan, which is the tool to meet the terms of the CRIPA Consent Judgment. In the most recent exit review for Patton State Hospital, the Court Monitor announced substantial compliance had been achieved in the area of Court Reports. This is significant as this is the first area of the Enhancement Plan to enter into the maintenance requirement of the CRIPA Consent Judgment.

The key challenges facing the state hospitals as they implement the requirements of CRIPA Consent Judgment are organizational change, adapting to the Recovery Model and philosophy, and staffing shortages. Recovery encompasses an individual's whole life including mind, body, spirit and community. It is based on an individual's strengths as well as on needs, preferences, experiences (including past trauma) and cultural background. It is not a step-by-step process but is self-directed by the individual based on continual growth, occasional setbacks and learning from experience.

Organizational change is difficult in the best of circumstances and normally requires five to seven years to effect, particularly changes of the magnitude we are facing and must internalize into the culture of our hospitals. Hospital management has embraced the Recovery Model, and leadership is now mentoring middle management and level-of-care staff. For example, hospital directors and other hospital executives are leading treatment groups to reinforce implementation of the Recovery Model.

The terms of the CRIPA Consent Judgment require a shift in the treatment model and philosophy at all the state hospitals. We are moving from a problem oriented approach to a recovery, strengths-based model, consistent with the most recent research and evidence-based practices.

The changes in the treatment model include a change in practice to a model that is evidence-based, requiring continuous monitoring of progress towards achieving stated goals, both at a patient and systemic level. Implementation of this new, ongoing monitoring function adds another layer of change to an already adapting workforce.

As discussed in the response to Question #11 regarding the current staffing vacancies at the state hospitals, continued vacancies remain a significant barrier to substantial compliance with the CRIPA Consent Judgment.

11. Please provide an update on vacant positions in the state hospitals, including clinical positions and other critical positions, such as key public safety staff. Has there been progress in reducing clinical staff vacancies since salary increases were funded through the 2007 Budget Act? To what extent are vacancies impacting the hospitals' ability to meet CRIPA requirements?

Over the past two years, there have been a number of official decisions and circumstances that impact the Department of Mental Health's (DMH) ability to recruit and retain qualified clinical, medical, and public safety classifications within its state hospitals. These decisions are the Plata and Perez court orders as well as decisions made by the Coleman Court Special Master. Additionally, the current salary structure for California Department of Corrections and Rehabilitation (CDCR) public safety classifications exceed the current salary structure for the DMH Hospital Police Officer Classes.

These decisions and circumstances have provided significant salary increases for certain classifications at CDCR institutions, creating significant salary disparities between identical classifications at DMH and the CDCR. The result has been a significant number of employee transfers to CDCR institutions. This places extraordinary pressures on DMH to recruit and retain qualified employees to serve patients within the state hospitals.

Recent efforts by the Administration have been successful in achieving some salary increases within the clinical and medical classifications. Salary increases for many of the affected classifications have been approved via the recent Budget Act of 2007, although these increases do not achieve full parity with CDCR institutions, they close the gaps substantially. Even though there has been some improvement in the reduction of vacancy rates (see page 19) from the salary increases, DMH continues to explore a variety of recruitment and retention strategies, one of which is to open additional campus sites for our internship programs.

Staff is working with great diligence to achieve compliance with the CRIPA Consent Judgment, which requires a considerable culture change from past practice in the hospital system, as discussed in the response to Question 10. While the staffing shortages have presented a major barrier to compliance with the CRIPA Consent Judgment, we are aggressively pursuing effective personnel recruitment efforts. DMH vacancy rates are continually monitored and strategies employed to recruit and retain staff.

Vacancy Rates for Clinical, Medical and Public Safety Classifications

Classifications	% Vacant as of June 2007	% Vacant as of October 2007
Staff Psychiatrist	45%	34%
Registered Nurse	17%	15%
Psychologist	24%	18%
Clinical Dietician	41%	29%
Hospital Police Officer Classifications (All Classifications)	11%	18%
Special Investigator Classifications (All Classifications)	60%	46%

Succession Planning

11. What proportion of management and other staff at DMH headquarters are expected to retire in the next five years? What is DMH doing regarding succession planning to fill vacancies due to expected retirements?

Recognizing that the administration and the consumers of our services directly depend upon the quality of our workforce, succession planning has been a priority for the entire California Health and Human Services (CHHS) Agency, including the Department of Mental Health (DMH). The issue of loss of experience, knowledge and leadership remains a legitimate management and operational concern.

DMH has actively participated in efforts to develop a plan in response to the impending retirements of the "baby boomers." Data collected in 2005 by CHHS reported that 70 percent of CHHS mid-level and senior managers were 50 years of age or older, and 37 percent of those managers were 55 years of age or older. These managers averaged 23 years of state service. As of August 2006, 26.9 percent of employees at DMH Headquarters are 55 years of age and older. DMH expects that most of these employees will retire within the next five years.

DMH staff participates in a variety of CHHS workforce initiatives, including the Succession Planning and Management Workgroup; CHHS Supervisors' Academy; CHHS Leadership Development Academy; CHHS Annual Leadership Convocations; and, of course, special recruitment exams for analysts and managers.

DMH has proactively taken steps to address vacancies. We are recruiting as early as possible when a vacancy is anticipated so that, in many cases, the incumbent

and new hire can work together for knowledge transfer and training. Additionally, to develop our staff, where appropriate, the department provides out-of-class assignments to potential leaders and also staff in operational positions.

CHHS and all its departments shared the costs of a combined exam for the classification of Staff Services Manager I. More than 3,000 prospective employees statewide took the test. Recruiting from outside state government will significantly expand our ability to hire quality employees. DMH is also administering examinations at a higher rate than in the past. We provide for continuous testing in selected classifications in order to continually refresh the candidate pool with qualified applicants. In the first quarter for Fiscal Year 2007-08 the Department released 53 examination bulletins, a significant increase over previous years. Our exam bulletins describe the Department's standing as one of the largest and fastest growing Departments and our significant opportunities for career growth and advancement.

In November 2007, DMH established a Staff Development Office that will develop programs for staff training and development to expand their skills and expertise to succeed those staff that retire. These programs will also enhance DMH's ability to retain staff by creating a positive work environment and better demonstrate that we place significant value on our human resources. It is expected the Office will be supported by a reasonable complement of staff recruited by the first quarter of 2008.

STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER
Governor

Department of Alcoholic Beverage Control
Department of Corporations
Department of Financial Institutions
California Highway Patrol
California Housing Finance Agency
Department of Housing & Community Development
Department of Managed Health Care



DALE E. BONNER
Secretary

Department of Motor Vehicles
Office of the Patient Advocate
Department of Real Estate
Office of Military & Aerospace Support
Office of Real Estate Appraisers
Office of Traffic Safety
Department of Transportation

BUSINESS, TRANSPORTATION AND HOUSING AGENCY

February 5, 2008

BY HAND DELIVERY

The Honorable Don Perata
Chairman, Senate Rules Committee
California State Senate
State Capitol, Room 205
Sacramento, CA 95814

Dear Senator Perata:

Thank you for the opportunity to respond to the Senate Rules Committee's questions in advance of the February 20, 2008 hearing to consider the confirmation of my appointment to the office of Secretary of the Business, Transportation and Housing Agency.

Enclosed for the Committee's consideration are my responses to the questions set forth in your letter of January 16, 2008, and an updated Form 700 Statement of Economic Interests.

I look forward to discussing these matters further and addressing any further questions the Committee may have prior to or during the upcoming confirmation hearing.

Sincerely,

A handwritten signature in black ink, appearing to read "Dale E. Bonner".

DALE E. BONNER
Secretary

Senate Rules Committee

Enclosure

FEB 05 2008

Appointments

cc: Members of the Senate Rules Committee
Mr. Gregory Schmidt, Secretary of the Senate
Ms. Nettie Sabelhaus, Appointments Director, Senate Rules Committee

**Senate Rules Committee
Confirmation Questions and Answers
Dale E. Bonner
Secretary, Business, Transportation and Housing Agency
February 5, 2008**

Goals and Objectives

- 1. Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as secretary of BTH? How will you measure your success?**

Top Goals (not ranked in order of priority)

Expanding BTH Leadership in Economic Development. Historically, the Business, Transportation and Housing Agency (BTH) has had oversight of various business regulatory departments charged with licensing and regulating certain industries. Starting in 2004, the Governor and the Legislature transferred to BTH responsibility for various economic development programs formerly administered by the now-dissolved Technology, Trade and Commerce Agency. As a result, BTH has taken on a larger role in economic development activities throughout the State.

Last year, the Governor signed Assembly Bill 1721, which broadly defines economic development and specifies that BTH shall be the primary state agency responsible for facilitating economic development in the State. As we work with various federal, state, regional, local, and international public and private entities to better coordinate efforts, we have already realigned current priorities throughout the Agency to promote economic development by, among other things: supporting small business growth and international trade and foreign investment, and maximizing state infrastructure investments.

Completing this evolution to a more focused and proactive economic development agency requires additional skill sets and policy focus, which we have pursued by realigning existing positions to allow for the appointment of deputy secretaries for economic development, health systems and life sciences, and environmental policy.

Mitigating Impact of the Mortgage Crisis. The subprime mortgage crisis and the resulting downturn in the housing market are slowing down the State's economy. Since early last year, the Governor's Taskforce on Non-Traditional Mortgages – consisting mainly of BTH departments – has worked diligently to develop a multidimensional approach to this multidimensional problem. (See responses to Questions 19-21.) I will continue to place high priority on efforts to mitigate the impact of the current crisis and eliminate the reoccurrence of factors that have contributed to it. (See response to Question 22.)

Improve Mobility and Air Quality. I will continue working closely with the Department of Transportation (Caltrans) and the California Transportation Commission (CTC) to quickly and efficiently implement the Proposition 1B transportation bond programs. To date, we have programmed approximately \$8 billion of the \$17.6 billion of bond funds under this Agency's authority. We are working with the CTC and numerous stakeholders to program the \$2 billion Trade Corridors Improvement Fund (TCIF) by April 10, 2008, and we will be distributing more than \$1.5 billion to cities, counties and transit operators before the end of the fiscal year. The focus beyond FY 2007/08 will shift from committing bond funds to project delivery and accountability. This will include efforts to increase the efficiency of planning and environmental review, improve collaboration among local, state and federal agencies to review and approve projects and permits, and accelerate the process of awarding contracts and beginning construction. Please see response to Question 7 for a further description of my goals and objectives relating to goods movement and the TCIF program.

Increase Affordable Housing and Promote Sustainability. I will continue using the Proposition 1C housing bonds and other available resources to increase the supply of housing that is affordable throughout the State. I will continue working closely with Caltrans, the Department of Housing and Community Development (HCD), and the California Housing Finance Agency (CalHFA) to make sure the housing and transportation bonds are disbursed quickly and efficiently so that improvements can be made quickly at the local level at the same time that we influence land-use patterns to embrace smart-growth principles.

I will also continue to address real and perceived inconsistencies in regional planning, housing-needs requirements and jobs/housing imbalances. These efforts will be made generally through the Regional Blueprint Planning process, which includes state and regional agencies working together to develop land use planning principles that embrace smart growth, enhanced public transit and goods movement, appropriate housing and job development, and economic prosperity. Finally, I will be working closely with HCD and various stakeholders to consider alternatives for developing a permanent source of funding for affordable housing. Meetings will be held throughout the State between January and June 2008.

Measures of Success

With key senior staff members having recently been appointed, we are developing performance metrics to measure the success of achieving the desired outcomes from our efforts to accomplish the goals described above. We will measure our success through a combination of metrics directly associated with our goals and the level of satisfaction of our government and private sector stakeholders and the public.

The Federal REAL ID Act

In May 2005 the federal REAL ID Act was signed into law. The Act provides that, in order for a federal agency to accept a driver's license or identification card for purposes

such as entering a federal building or boarding an airplane, a state must issue the driver's license in accordance with the Act's provisions.

The Act and the proposed regulations impose requirements for background information an individual must present prior to the issuance of a driver's license. Moreover, they impose requirements on state Departments of Motor Vehicles relative to driver's license design, document verification, and computer technology upgrades. According to the California Department of Motor Vehicles (DMV), these requirements mean increases in time and costs to individuals and states. Last year, the California DMV estimated the cost of compliance with the Act to be \$500 million.

On Friday, January 11, 2008, the U.S. Department of Homeland Security (DHS) issued its proposed Final Rule for the implementation of REAL ID. According to DHS, the Final Rule "provides the states the flexibility to implement the law's requirements in a realistic and effective manner." For example, while the original proposed regulations set an implementation date of May, 2008, for states to comply with the Act, the Final Rule proposes to grant an extension of time for compliance until December 31, 2009, for any state that applies. The California DMV has provided comments to DHS throughout the REAL ID regulatory process, expressing concerns over schedule, cost, technology requirements, and privacy protection. Does the Final Rule sufficiently address the department's concerns? If so, how? If not, why not?

Overall, the Final Rule addresses many of the comments the DMV submitted to DHS in May 2007.

The Final Rule Substantially Addressed Schedule and Cost Concerns

Schedule. DHS initially proposed that states become compliant with the REAL ID Act between May 11, 2008 and May 11, 2013, which would have created untenable administrative and operational burdens and significant increased implementation costs to California and other states.

The Final Rule authorizes a considerably longer compliance period, requiring that driver license/identification cardholders born after December 1, 1964, renew their DL/ID cards in-person before December 1, 2014, and cardholders born on or before December 1, 1964, renew their DL/ID cards in-person before December 1, 2017. This benefits California by reducing the costs that otherwise would be incurred by having to bring DL/ID cardholders into a DMV field office prior to their normal renewal cycle to be issued REAL ID compliant DL/ID cards. As a result, the DMV will only require a third of its 24 million DL/ID cardholders (six to eight million) to visit a field office instead of two-thirds of the card holders who would have been required to visit a field office to provide identity documents in-person under the original May 2013 requirement.

The Final Rule also permits states to apply for an extension from May 11, 2008, to December 31, 2009, to achieve material compliance. On January 11, 2008, the DMV requested an extension of the May 11, 2008, compliance date. On January 17, 2008,

DHS granted the extension request through December 31, 2009. During this extension period, a thorough analysis of the Final Rule will be conducted to determine the fiscal, operational and legislative impacts to California.

Cost. The proposed rule would have required full compliance over a *five-year* period ending May 11, 2013, with an estimated compliance cost of \$500 to \$750 million. However, under the Final Rule, taking into consideration the two-year extension to January 10, 2010, the DMV expects the estimated cost to become compliant over an *eight-year* period to be less. The estimated compliance costs will represent the DMV's estimated costs of issuing REAL ID-compliant DL/IDs through *in-person* visits by about one million cardholders annually for eight years, who otherwise would have renewed by mail or Internet. The estimated cost will not include the costs to develop the electronic verification systems required under the REAL ID Act.

Concerns Regarding Technology, Privacy and Security

The Final Rule does not fully address the DMV's concerns regarding technology requirements, and privacy and security protections.

Technology Requirements. The REAL ID Act requires five national electronic verification systems, only two of which are currently operational: the Social Security Number On-Line Verification (SSOLV) and Systematic Alien Verification for Entitlements (SAVE). The remaining three systems requiring further development are: the U.S. Department of State passport database, the Electronic Verification of Vital Events (EVVE) birth certificate and death records verification system, and the All Drivers National Pointer System. The Final Rule acknowledges that these yet-to-be developed systems will not be operational by the May 11, 2008, REAL ID compliance date, and have postponed state verification requirements until the remaining systems are fully operational.

While states will not be required to comply with the electronic verification requirements until the systems are developed, the Final Rule fails to adequately address the costs, source of funding, logistical processes for systems development, and privacy and security of state databases for all required systems. To date, the total upfront costs of these five systems have not been identified, nor which entity will be responsible for oversight and administration of the systems and determining ongoing transaction fees for their use. Therefore, California and other states must continue to push for additional federal funding for development costs for these systems. To address verification systems development costs, California plans to make formal application to DHS for a portion of the \$80 million in grant funds available for systems development and state connectivity costs by March 2008.

Privacy and Security. The REAL ID Act requires states to collect and retain source records regarding identity and proof of lawful presence and to make that information available via electronic access as part of a national drivers' database. Consequently,

the DMV will be collecting more information and may be required to share information beyond what is currently allowed in state statute.

Because of the possible sharing of card holder information with other states, the state with the weakest security could conceivably make other states' systems and data vulnerable to unauthorized access, acquisition, or disclosure. This raises a concern, since California's privacy laws are considered some of the most stringent in the nation.

California has expressed its concerns to DHS that the Final Rule does not contain specific provisions or minimum standards governing the privacy and security of DL/ID cardholder information. In response, DHS has recommended that states address these issues as part of a governance structure organized by the states to make decisions on minimum standards and business practices and technology for the privacy and security of personal information based on the states' needs and priorities. As such, California will continue to work with DHS, the American Association of Motor Vehicle Administrators and other states to establish best practices.

- 3. The Act requires applicants for a REAL ID to present documentation verifying their "legal status" in the United States prior to being issued a compliant ID or license. However, the Act does not prohibit states from issuing modified, non-compliant forms of driver's licenses to applicants who cannot verify their "status." How is California's DMV proposing to handle the issuance of driver's licenses or ID's to individuals who cannot verify their legal status?*

California Vehicle Code sections 12801.5 and 12801.8 require the verification of the legal presence of DL/ID card applicants. Additionally, sections 12801 requires Social Security Number verification and section 12800.7 requires verification of name and address. New implementing statutes will be required if the current DL/ID card issuance requirements are to be changed or expanded to allow for individuals who cannot verify their legal status. Without changes to existing statutes, the DMV must continue to verify legal presence status prior to issuance of a California DL/ID card.

If all of the estimated two million undocumented persons applied for a DL under a new authorizing statute, they would also be subject to the full range of written and driving examinations, thereby tripling the current workload of original DL applicants. Assuming the legal presence requirement was repealed, these applicants would still have to meet all the existing legal requirements to obtain a California driver license.

- 4. With respect to privacy concerns surrounding the implementation of REAL ID, the Final Rule requires states to submit a Security Plan to DHS detailing how the state proposes to protect personally identifiable information and data. What is the status of the Security Plan the California DMV is developing? How does this plan differ from the security features associated with the current driver's license issued by the DMV? What parties, if any, are assisting the department in the development of such a plan?*

What is the status of the Security Plan the California DMV is developing?

The DHS has not yet developed criteria for preparation of state Security Plans. DHS released the Final Rule on January 11, 2008. The final guidelines are expected to be released by DHS within three to six months of that date. However, the DMV has been developing a Comprehensive Security Plan with the assistance of the State's Chief Information Officer and a private consulting group. The Privacy and Security Enhancement Project (PSEP) will result in a security enhancement plan that aligns DMV business practices and technology with the REAL ID Act requirements and industry best practices in privacy and security of information.

In terms of the PSEP project, the consultant will conduct a progress review at the end of March 2008, and a second progress review in June 2008 to rate DMV's progress towards security enhancements consistent with the Final Rule. The consultant has performed the following assessments in preparation for meeting the REAL ID Act Final Rule:

- Readiness Assessment (completed June 2007).
- Privacy Assessment (completed June 2007).
- Risk Assessment (completed July 2007).
- Roadmap (completed September 2007).

Future deliverables include security knowledge transfer, a preliminary PSEP progress review and a final review.

How does this plan differ from the security features associated with the current driver's license issued by the DMV?

The Comprehensive Security Plan goes beyond the card security features. It addresses such items as:

- Physical Security
- Administrative and technical security to protect personally identifiable information (PII). The Final Rule as it refers to PII is consistent with California law and also defines another category of information called Sensitive Security Information (SSI), which must be handled and protected in accordance with 49 CFR Part 1520, Protection of Sensitive Security Information. 49CFR Part 1520 applies to any information developed or acquired in the conduct of security activities and establishes a "need-to-know" requirement prior to release. This will affect public access to the previously mentioned security plan itself.
- Security plan itself
- Privacy
- Employee background checks
- Employee training for fraud document detection and security awareness
- Incident Response Plan

- Internal Audit Controls

As to the security features of the current DL issued by DMV, additional security features will be added as part of the next driver license contract scheduled for implementation in late 2009. While the 2001 card has various covert, overt, and forensic features that were considered state-of-the-art, the DMV has worked with a task force that included representatives from state and federal law enforcement agencies, the banking industry and U.S. Department of Homeland Security to develop requirements to create a new state-of-the-art card that will make California's driver license one of the most secure in the nation.

In short, not only is California providing state-of-the-art DL/ID card security features, it is raising the bar beyond the broad privacy and security requirements as stipulated in the Real ID regulation by striving to align with industry best practices such as the National Institute of Standards and Technology (NIST).

Parties Assisting in the Development of the Plan

See above.

5. *Will the California DMV apply for an extension of time to comply with the REAL ID ACT, as authorized under the Final Rule?*

On January 11, 2008, the DMV requested an extension of the May 11, 2008, compliance date. On January 17, 2008, DHS granted the extension request through December 31, 2009. During the extension period, there will be no changes to the normal DMV business practices governing the issuance of DL/ID cards and, the federal Transportation Security Administration will accept the current DL/ID card for boarding commercial aircraft and entering federal facilities. The DMV will be awarding a New DL/ID contract in late 2008 with full implementation by the end of 2009. Additionally, the DMV will be able to further assess the need for additional resources and conforming REAL ID legislation for FY 2009/10.

6. *According to DHS, citizens from states that are not in compliance with the REAL ID Act would have to show alternative forms of identification to board a commercial airplane or enter a federal facility (e.g., a passport). Given the cost and other burdens associated with compliance, should the state of California consider not complying with the REAL ID ACT?*

As noted above in response to Question 2, the potential costs and other burdens associated with compliance have been reduced in light of certain modifications the DHS has made in response to comments from the DMV and other states. Nonetheless, the DMV and BTH are continuing a thorough analysis of the Final Rule to identify the impacts to California. This analysis will examine the fiscal, operational, legislative, and cardholder perspectives, in order to determine the degree to which the costs and other administrative burdens may influence any determination of whether the state should implement the REAL ID Act.

Transportation and Trade

In recent years the volume of cargo moving through California's ports has increased dramatically. While this expansion has boosted economic activity in several regions, it has also put a great deal of pressure on transportation networks and has contributed significantly to emissions of air pollutants in areas already plagued by air pollution.

Proposition 1B, passed by the voters in November, 2006, included an unprecedented investment of public funds to improve the State's trade corridors and fund strategies to reduce emissions from the activity within those corridors. Proposition 1B included the \$2 billion Trade Corridor Improvement Fund (TCIF) to improve infrastructure while reducing emissions, and an additional \$1 billion program administered by the California Air Resources Board to reduce emissions from sources involved in trade activity.

In December, 2007, the California Transportation Commission, at your urging, adopted guidelines for the distribution of funds from the TCIF program contained in Proposition 1B. The guidelines included the identification of targeted amounts of funding for three major trade corridors in California (i.e., Northern California, Los Angeles-Inland Empire, and San Diego/Border) and the set-aside of a small amount of funding for smaller trade areas throughout the State. Governor Schwarzenegger's budget proposal includes a request to appropriate \$500 million to the TCIF in the 2008-09 Budget Year.

In addition to the funding provided by the passage of Proposition 1B, legislation is pending in the Assembly to impose a container fee on cargo moving through California's major ports. SB 974 (Lowenthal) would impose, beginning on January 1, 2009, a container fee on cargo passing through the ports of Los Angeles, Long Beach, and Oakland. The revenues generated by these fees would be directed toward rail-related infrastructure and mitigation of pollution caused by goods movement through the ports. The Schwarzenegger Administration is reportedly working with Senator Lowenthal and interested stakeholders on crafting a workable container fee. Also, the ports of Los Angeles and Long Beach voted on January 14, 2008, to impose a cargo fee to address infrastructure needs within the ports' facilities.

7. *Proposition 1B provides a magnitude of investment of public funds to improve trade corridors in California that is without precedent. Please describe the role you are playing in investing these funds and the policy objectives you believe the state will achieve.*

Secretary's Role. My current efforts are focused on investment of the TCIF. At the September 20, 2007 meeting of the CTC, I asked that the CTC adopt a preliminary TCIF program by the end of the year. I also outlined a general framework in which all parties could work together to achieve that goal, and I proposed a series of specific actions toward that end. As a result, the CTC has accelerated efforts to program the TCIF and is on track to commit this funding by April 10, 2008.

As reflected above, I have assumed a number of roles, including that of strategist, convener (of government, private sector and legislative stakeholders), broker of policy conflicts among state, local, and federal transportation agencies and stakeholders, and advocate for implementation of the Administration's Goods Movement Action Plan and Air Emissions Reduction Plan.

Policy Objectives. As noted above, my current priority is to see the CTC adopt a preliminary TCIF program by April of this year. The overall goal is to ensure a project mix that addresses the most critical needs to improve the performance of the statewide goods movement system in a timely manner. By maintaining a statewide perspective, we seek to:

- Assess projects as part of a statewide goods movement system
- Compare port, rail, and highway projects in a common framework
- Identify and implement critical public health and environmental mitigation and community impact mitigation actions
- Prioritize projects and actions to address the most important needs first
- Concentrate efforts to secure required funding in an orderly fashion
- Undertake simultaneous and continuous improvement in infrastructure and environmental mitigation

8. The CTC's adoption of guidelines for the TCIF program was not without controversy and challenge. What did you learn from this experience and what, if anything, would you do differently in the future?

Subsequent to the CTC's September 20, 2007, meeting (see response to Question 7), I received a number of constructive comments from members of the Legislature and regional stakeholders. One theme that emerged was a general concern that the CTC be afforded an opportunity to adopt project selection criteria before considering specific projects that may be proposed by the Administration and regional agencies. After carefully considering the concern, I determined that the process would be improved and the interests of all parties better served if we proceeded with a thorough discussion of criteria before the Administration identified what we believe to be the highest priority projects throughout the State.

During this process, it was important to demonstrate my appreciation of the roles of all government and private sector stakeholders and the ultimate discretion reserved to the CTC. It was also very important to welcome the early and active participation of stakeholders and legislative staff in the eight public meetings I convened and subsequent discussions with the CTC. If I were starting this or a similar process again, one thing I would do differently is to start much earlier in building the relationships necessary to achieve consensus among as many stakeholders as possible.

9. Please describe your view of the relationship between improving goods movement and improving air quality in California. When one objective is in conflict with the other, what will you do? Can improvements to both be achieved simultaneously?

Improving Goods Movement and Air Quality. My view of the relationship between improving goods movement and improving air quality is reflected in the Administration's Goods Movement Action Plan (GMAP), released in January of 2007. The GMAP provides that investments in goods movement infrastructure must be accompanied by simultaneous and continuous efforts to improve air quality and other impacts on communities relating to the movement of goods.

Achieving Improvements Simultaneously. I do not perceive these to be competing objectives, but instead see them as melded together in a common objective to achieve simultaneous and continuous improvements in infrastructure and air quality. The elements to achieve simultaneous and continuous improvement include:

- Ongoing implementation of existing air quality programs, including the mobile source emission reduction measures set forth in the State Implementation Plan (SIP) and subsequent program modifications.
- Implementation of the California Air Resources Board's (CARB) new and extensive Emission Reduction Plan for Ports and Goods Movement in California.
- Infrastructure project compliance with the California Environmental Quality Act (CEQA), including analysis of local and regional emissions impacts and quantification of any emission reduction benefits.

In addition, my approach to achieving simultaneous and continuous improvements is to maintain an active partnership with the California Environmental Protection Agency, the CARB, regional air quality management districts, and environmental stakeholders. We have also continued our dialogue with shippers, ports, carriers and with community groups. Their collective input and expertise have been helpful in providing a technical approach to the review of proposed projects. As a result, we expect that all projects funded with TCIF dollars will have a net benefit to a region's air quality conformity requirements, and we will use the best available technology to achieve such results.

10. Do you support the imposition of a container fee on cargo moving through California's major ports? If so, should such a fee be locally-negotiated, with an emphasis toward on-site port improvements, or should it be imposed by state law, with an emphasis on broader, regional improvements?

The Administration's GMAP estimates that \$15 billion of investment is needed for California's goods movement infrastructure over the next decade. In addition, the CARB Emission Reduction Plan estimates that between \$6 billion and \$10 billion will be needed for reductions in emissions from goods movement-related sources of air pollution. Costs for required project-by-project mitigation under CEQA will also have to be factored in to determine the full funding requirement.

To meet these needs, full utilization of all traditional funding sources, public and private, is an absolute necessity. On the public sector side, a concerted effort will be needed to leverage Proposition 1B bond funding and to obtain as many dollars as possible from

potential federal and local sources. On the private sector side, owners and operators of sources of air pollution will be expected to shoulder the majority of necessary equipment upgrades and replacements to achieve the required level of pollution control. However, even with full deployment of existing funding sources, a sizeable shortfall of funding persists. While the total gap is not known, we must consider new sources of revenue, including local and state user fees.

A locally negotiated container fee and a fee enacted in state law are not mutually exclusive and both can be pursued simultaneously. Various user fees can be assessed for the use of infrastructure, either directly or indirectly.

Local User Fees. Various local fees are, or soon will be, charged to users of port and freight movement corridors. Examples:

1. The Alameda Corridor charges "User Fees" and "Container Fees." User fees are triggered whenever a container is loaded/unloaded and transported by rail to/from a port facility or uses the Alameda Corridor.
2. PierPass is a non-profit corporation created to collect container fees on goods moved through some California ports. The container fee is collected only during the peak daytime hours between 3 a.m. and 6 p.m., Monday through Friday. The collected funds pay for the port's new extended hours of operation and some port security investments.

The Boards of the Ports of Los Angeles and Long Beach have recently passed two container fee measures. One fee is \$35 per twenty-foot equivalent unit (TEU), which is the standard unit for intermodal shipping containers, which equals \$70 for most containers, to pay for diesel truck retrofits of approximately 16,000-18,000 older, polluting trucks currently serving the ports. This money will be matched to funds provided by the CARB under Proposition 1B for the same purpose. The second fee is \$15 per TEU or \$30 per regular container to fund internal port infrastructure projects. Both fees will expire upon completion of the projects they are funding.

The State could benefit from a fee structure on the millions of containers that move through the ports if those fees were crafted in such a way that they would be used to build the infrastructure elements that benefit shippers using the ports, while mutually benefiting the people of California by reducing congestion, reducing harmful community impacts and improving air quality. Governor Schwarzenegger has signaled that he is willing to look at container fees similar to those proposed by SB 974, but details on how that bill might be modified remain to be worked out.

There are several issues that need to be clarified before we can settle upon an approach to raising capital from port shippers for our infrastructure needs. Two important issue areas are:

- Elasticity: What is the amount of potential fees that will have a serious impact on shippers causing them to go to other ports rather than California ports? The current cumulative (port-assessed) fee structure would be at \$100 per 40-foot container excluding Alameda Corridor [which is \$18.67 per loaded TEU, and PierPass peak-hour fees of \$50 per loaded TEU.] We need to understand how much a cumulative fee structure at the ports would lead to diversions of traffic to other ports.
- Nexus: Many major shippers are opposed to container fees if those fees are to be spent beyond the immediate confines of the port boundaries. They have threatened to litigate fees used for purposes other than direct investments on infrastructure that move their goods. Some legal observers believe that it is possible to use container fees for transportation projects beyond the port boundaries, but that may depend on the definition of the “nexus” between the infrastructure and impacts related to moving port goods to market and the issue of public trust with respect to the tidelands boundaries.

These issues are not insurmountable, but they must be considered with care and in consultation with key stakeholders to ensure that the potential benefits of container fees are properly distributed to relevant projects and mitigation measures.

11. What role do you see the business community playing in the overall enhancement of goods movement transportation systems in California?

As noted above in response to Question 10, full utilization of all traditional funding sources, public and private, is an absolute necessity. The business community can and should provide resources, expertise and advocacy to enhance our goods movement system. Private sector owners and operators of polluting sources must shoulder the majority of necessary equipment upgrades and replacements to achieve the required level of pollution control.

Resources. With respect to resources, the business community – including carriers, senders and receivers – should be expected to share the burden of paying for enhancing the goods movement system. User fees of various kinds are clearly part of the solution. (See response to Question 10.)

Performance-Based Infrastructure. It is also important to identify ways in which the private sector can help deliver projects more quickly and cost effectively without weakening the environmental review process. To this end, public-private partnerships, design-build, and design-sequencing are all important tools. Public-private partnerships can provide additional sources of funding that may allow needed transportation projects to be built. Potential benefits include:

- Savings of time and money through innovative ways to finance and construct transportation infrastructure projects.
- More efficient allocation of risks between the public sector and the private sector.

- More effective pricing, including full life-cycle costs, of current and future transportation infrastructure projects so that the facilities are well-maintained and the entire cost to the public is taken into account.

Design-build authority would allow the State to contract with one entity to deliver a project from initial design and engineering to completion of project construction, often saving time and clearly fixing responsibility and accountability on a single entity. Design-sequencing is a method by which, rather than delaying all construction to commence when the design of each phase of a project is completed, construction of each phase can commence before final design is complete. These tools can, in some circumstances, safely deliver projects with significant time and cost savings, while adhering to the environmental review process.

Expertise. The business community is a great source of expertise that we can call upon for help in finding solutions. For example, logistics is one of the fastest-growing industries in California. It provides not only a vital function in the economy, but also the source of thousands of new, good-paying jobs for California workers. The experts on the logistics chain have a depth of experience and knowledge about how to make goods flow quickly and reliably and how to prepare for future growth that we know is coming with an increasing population.

Advocacy. We need the business community's support in advocating for solutions requiring greater investment. User fees are not just paid by the direct users of a facility or a service. They are, in most cases, ultimately paid by the consumer. The business community's leadership must educate its own members and help educate the general public about how critical it is for everyone to have a smoothly functioning, adequately sized and environmentally friendly goods movement infrastructure.

12. The state's highway system is funded through the State Highway Account, which is supported primarily through the gas tax and weight fees. The Legislative Analyst's Office has reported that "maintenance and rehabilitation requirements are growing faster than the revenues which pay for them," due in part to the fact that the gas tax has not been raised in 13 years. How should the state address its transportation rehabilitation and maintenance needs in light of current funding and budget issues?

Maintenance and rehabilitation needs are clearly growing faster than the revenues that pay for them. Bridging the gap will require the cooperation of all levels of government and the private sector.

Push for More Federal Funding. The current Federal Highway Act (SAFETEA-LU) provides the State with funding derived from a Federal Excise Tax. Over the past 10 years, California has been returned about 91 percent of the federal formula funding from the federal gas tax revenues collected within the State, which does not include funds earmarked for specific allocations. Federal revenues are limited by "Obligation Authority", which has averaged about 90% of the apportionment level over the past 10 years. These revenues are forecasted to grow at a rate of 1.8 percent, which does

not nearly keep pace with historical escalation of costs of construction and support at 5.3 and 2.4 percent, respectively.

In addition, federal funding is subject to unpredictable rescissions when the federal government experiences shortfalls. Over the past several years, transportation funding has continuously been under the cloud of rescissions, which can delay reimbursements to the State. The Federal Highway Trust Fund will be unable to meet its ongoing commitments by federal fiscal year 2009-10. Congress is currently considering reauthorization proposals that may significantly change the federally funded transportation program.

Since completion of the Interstate System, there has really been no clearly focused objective embodied in national transportation policy. Under current programs, maintenance is not an allowable expenditure for federal funding. While we use federal funds in support of our SHOPP program, we need more federal funding and emphasis on preservation of existing infrastructure. Therefore, we have been pushing the federal government to develop a coherent national transportation policy that includes preservation as a strong component. As part of our strategy, we are planning to seek a stable, more robust funding stream for transportation programs so that more state and local dollars can be applied toward maintenance and rehabilitation. We need to work with federal, local and private sector partners to ensure that we do not allow the system in which we have made enormous investments over many decades to fall into neglect and disrepair.

Encourage Local and Regional Investments and Planning. As transportation funding has evolved over time, control of a significant amount of transportation funding has been disbursed to regional and local agencies. This makes it increasingly difficult to develop, maintain and rehabilitate the State's transportation system. On the other hand, this approach also recognizes the increased role of local and regional agencies in advocating county sales tax measures and coordinating local land-use decisions with state and local transportation planning.

Maximize Efficiency and Impact of State Funding. Most of the Proposition 1B and Proposition 42 funds cannot be used for maintenance and rehabilitation purposes, which underscores the need for greater federal support as discussed above.

Without sufficient resources to fully address our preservation needs, it is all the more important that we use existing resources more efficiently and effectively, develop tools that improve accountability, and more effectively communicate with the public regarding systems needs and our efforts to address them. To achieve these objectives, I will continue to support the progress Caltrans has made in: focusing on preventive maintenance, developing specifications for new products and applications that reduce costs and improve pavement performance, and establishing a new Pavement Management Division to focus efforts on managing this important asset.

In addition to these and other efforts, I will encourage Caltrans to pursue GARVEE funding to accelerate project delivery of federally funded SHOPP projects. While GARVEE is not a revenue source, it is a means to accelerate project delivery during periods of significant construction cost increases and demand. Used strategically, GARVEE financing can avoid construction cost increases. However, debt service associated with GARVEE financing also reduces future revenues available for ongoing maintenance and rehabilitation needs.

Increase Participation of Private Sector. As noted above in response to Question 11, it is also important to identify ways in which infrastructure project delivery can be expedited and costs reduced without weakening the environmental review process. Appropriate public-private partnerships, design-build, and design-sequencing are all critical tools. In some instances, public-private partnerships can provide additional sources of funding that may allow needed transportation projects to be built.

Pursue Strategies to Reduce Vehicle Miles Traveled. In fast-growing states like California, the problem of maintaining what we build is compounded by the need to accommodate the anticipated growth in population and vehicle miles traveled (VMT), in addition to the challenge of taking care of an aging system with our inventory increasing each year. The Administration's long-range plan, "GoCalifornia," contemplates and works toward reduced VMT as a strategy for reducing the stress on the system. This will be achieved primarily by providing much improved public transit options and land-use patterns that reduce the frequency and length of highway trips and total VMT from the levels projected, if current trends were not reversed. If all the proposed investments are made, the total hours-of-delay will be reduced by 15 percent from 2005 levels. When achieved, this will reduce the stress on the road system and allow the available maintenance and rehabilitation dollars to go further.

Proposition 1B

13. *Last year, voters approved Proposition 1B, the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006. The California Transportation Commission (CTC) and Department of Transportation (Caltrans) are the primary agencies responsible for implementing Proposition 1B. What role do you see the investment of state bond funds playing in California's slowing economy? Should the infrastructure bond package be considered an economic stimulus package? If so, how are you accomplishing this objective?*

Role of State Bond Funds in California's Economy

BTH interprets "economic development" broadly to include any activity that enhances the factors of productive capacity, such as land, labor, capital, and technology in the State's economy. Our current approach is to implement the Proposition 1B transportation bonds and Proposition 1C housing bonds in ways that directly and indirectly support economic development throughout the State. By putting these dollars

to use as quickly and efficiently as possible, the programs can play an important role in stimulating short and long-term economic development.

Infrastructure Bonds as an Economic Stimulus Package

It is important to distinguish current federal economic stimulus efforts from economic stimulus that can be achieved with the infrastructure bonds. Currently, federal efforts are focused on short-term strategies to stimulate the economy through increased consumer spending. Most of the State's infrastructure bonds are being invested in programs and projects that involve mid- and long-term planning and construction cycles. Nonetheless, construction of transportation facilities has a particularly high payoff in terms of jobs, which in turn increases economic activity and tax revenue. Contractors, construction workers, and material and equipment suppliers are the direct beneficiaries, but there are many other indirect beneficiaries. It is conservatively estimated that \$1 billion in spending on infrastructure facilities creates 18,000 new, mostly high-paying jobs, and that each dollar spent on construction generates at least four dollars in economic activity.

In terms of the residential construction industry, the slowdown in homebuilding means that there is considerable "slack" in the industry – contractors are losing revenue and workers are at risk of losing jobs. As a consequence, the industry needs an alternative source of work, which public infrastructure can provide. As a potential bonus to the public sector, the relatively abundant supply of contractors willing and able to do public infrastructure work may mean that construction bids will tend to come in lower than they might at another time (as in the past few years) when public-sector infrastructure was competing for contractors with a booming land development homebuilding sector.

The infrastructure bond funds are readily available, the projects are both important for the economy and many are ready to go, and there is capacity in the industry to meet the needs. For these reasons, California is uniquely situated to couple infrastructure bond expenditures with a federal stimulus package to create a higher level of stimulus for the California economy.

How BTH is Using Bond Programs to Stimulate Economic Development

Of those administered by BTH, the transportation bonds have the highest potential to result in early economic stimulus. This potential will be maximized if we put available resources to use immediately at the same time that consumers may receive more spending capacity through federal efforts that may soon be forthcoming. To achieve this, we are: (1) moving quickly to ensure that all Proposition 1B bond dollars are programmed as soon and as efficiently possible, and (2) working to streamline permitting and other processes so that construction can begin on projects as soon as possible.

Allocation of Bond Dollars. Caltrans and the CTC have acted quickly to implement Proposition 1B at an accelerated pace. For example:

- a. In less than one year after voter approval of Proposition 1B, the CTC, working closely with Caltrans and regional agency partners, has programmed specific projects constituting approximately \$8 billion of the \$17.6 billion under their authority.
- b. At my urging, the CTC accelerated efforts to program the \$2 billion TCIF and is on track to commit this funding by April 10, 2008.
- c. The CTC and Caltrans have developed draft guidelines for the \$250 million Traffic Light Synchronization program and the \$250 million Highway-Railroad Grade Crossing program, and should commit those funds before the end of the current fiscal year.
- d. More than \$1.5 billion of funds for local agencies and transit operators will also be distributed before the end of the fiscal year.

This will leave only \$5 billion of the funds under CTC or Caltrans administrative control uncommitted, \$4.1 billion of which will be allocated by formula and \$1 billion for the State Local Partnership Program.

Accelerating Construction. There are various transportation projects that are "on-the-shelf" and ready to go in relatively short order. Within a period of a few months, construction contracts can be awarded and projects can begin construction. In addition, we are seeking ways to make further progress in streamlining the process by which construction funds are put to work. This includes efforts to: increase the efficiency of planning and environmental review; improve collaboration among different agencies at the local, state and federal level to review and approve projects and permits; and accelerate the process of awarding contracts.

14. Are the CTC and Caltrans acting quickly enough to ensure that bond funds are moving to projects as expeditiously as possible to provide the state with an economic stimulus? If not, what operational improvements should occur to improve performance?

As noted above, Caltrans and the CTC have acted quickly to implement Proposition 1B at an accelerated pace. (See response to Question 13.)

In addition, Caltrans has worked closely with the California Transit Association and regional agencies to adopt guidelines for the \$3.6 billion Public Transportation Modernization, Improvement, and Service Enhancement program, and Caltrans is providing assistance to the Department of Finance in fulfilling its role in the distribution of the \$2 billion for the Local Streets and Roads Program. The processes developed for the appropriations included in FY 2007/08 will be evaluated and streamlined for future year appropriations of these formula-based programs.

The actions described above should ensure that the \$3.63 billion appropriated in the FY 2007/08 budget for the Proposition 1B programs administered by the CTC, Caltrans

and the Department of Finance is quickly put to work funding transportation projects and creating jobs. The CTC has yet to develop a schedule for the State and Local Partnership Program because legislative leaders have indicated they would like to provide additional direction in future legislation.

Additionally, the FY 2007/08 budget bill included language that allows the Director of Finance to increase appropriations to accelerate project construction. Caltrans has requested an additional \$300 million in appropriation authority that funds ready-to-go projects that would otherwise be delayed without these funds. Future year budget language should include similar flexibility that allows the Administration to respond swiftly and easily to resource needs so that project delivery can be accelerated and the public receives the economic and mobility benefits associated with early delivery.

Opportunities for Operational Improvements

The focus beyond FY 2007/08 will shift from committing bond funds to project delivery and accountability. The Administration has been partnering with the construction community to grow the industry to ensure that labor, equipment and materials are available to construct the improvements funded from the bonds in a timely and cost-effective manner.

The Administration and Legislature can work together to fast-track bond expenditures to create good-paying jobs and stimulate the economy. The Administration is launching an Infrastructure Coordinating Council (ICC) to both expedite existing projects and work with the Legislature to craft bills that will, where necessary, accelerate infrastructure funding and project authorization. The ICC will include the Secretaries of BTB, Resources and Environmental Protection, and the Directors of Caltrans, Housing and Community Development, Water Resources, and Parks and Recreation. The ICC will propose solutions to funding and project delivery opportunities so that projects can move forward quickly. As examples, project delivery and construction can be improved with: additional reforms to streamline and accelerate permit approvals and required studies; reliable and flexible funding; and broad design-build authorization, construction management-at-risk and other methodologies to build better, faster and with added value.

15. According to a recent Senate Budget and Fiscal Review Committee analysis, Caltrans "has not made any measurable progress in hiring the 450 new staff included in the budget" for Proposition 1B implementation. Moreover, Caltrans now risks these positions due to the vacancy elimination rule. What are the specific staff needs at Caltrans to implement the Proposition 1B program? What is the department's plan to meet that need (i.e., how many hires over what time horizon)?

Staffing Needs. Transportation funding and delivery strategies allow projects to be initiated and, in some cases, cleared through the environmental process in advance of obtaining capital funding needed to construct the project. As a result, Caltrans Capital

Outlay Support (COS) staffing plans have been based on keeping projects moving through the delivery "pipeline" in anticipation of funding.

When Proposition 1B passed, there were many projects in the pipeline that met the criteria and intent of the bond programs. The CTC has since directed most Proposition 1B bond funding to construction contracts. Consequently, the workload impact from the bonds is being addressed through modest staff increases and added resources for Architectural and Engineering contracts.

For FY 2007/08, the initial hiring goal for Caltrans COS staffing increase was approximately 700 Person Years (PYs) based on this increased workload and an anticipated attrition rate of 2.5 percent. The hiring goal has been revised to approximately 640 PYs based on revised workload and a lower than anticipated attrition of 1.5 percent. The original workload estimates were developed prior to the CTC's adoption of the specific projects to receive bond funding, and the lower attrition is assumed to be a result of recent salary improvements for engineering staff based on pay parity of other public agencies.

Plans to Meet Staffing Needs. The COS program has hired 247 new employees through the end of December 2007 and expects to meet the 640 PY goal by the end of the fiscal year. Caltrans is continuing aggressive recruitment efforts including a newly developed recruitment video, job fairs, recruitment ads in trade journals, and recruitment visits to college campuses. Caltrans has consulted with the Department of Finance to re-establish any new positions lost through the vacant-six-months rule that may be needed to support the Caltrans' hiring plan for the remainder of the year.

Total workload to complete Proposition 1B projects is currently estimated to be 7,000 to 8,000 Full Time Equivalents spread over the next five to seven years. Most of this workload is expected to be handled within existing staffing due to projected declines in other programs, such as the State Transportation Improvement Program (STIP) and Seismic Retrofit, with modest levels of hiring and added Architectural and Engineering contracting to meet individual fiscal year needs for specific areas such as environmental and right of way. The COS program is currently developing the workload requirements for FY 2008/09 and Caltrans anticipates a relatively flat forecast.

Proposition 1C

In November, 2006, voters approved Proposition 1C, the Housing and Emergency Shelter Trust Fund Act of 2006. The Department of Housing and Community Development (HCD) and the California Housing Finance Agency (Cal-HFA) are the agencies responsible for implementing Proposition 1C.

Two new programs contained in Proposition 1C that are to be administered by HCD are the \$300 million Transit Oriented Development (TOD) program and the \$850 million Infill Incentive Grant Program. These two programs are considered by many to be non-traditional housing programs. Whereas traditional affordable housing programs

administered by HCD solely focus on the creation of more affordable housing, the TOD and Infill Incentive programs have numerous policy objectives (e.g., creating mixed-income housing near job centers, increasing transit ridership, reducing vehicle miles traveled, preserving open space, invigorating older neighborhoods, etc.). The guidelines adopted or pending by HCD to implement these programs have been criticized for adhering too closely to HCD's historical programs and failing to recognize the many policy objectives these new programs are trying to achieve. One recent comment letter stated that "the program guidelines aim more at producing a single type of housing than providing local governments with the critical tool necessary to revitalize infill areas..."

16. What do you see as the primary policy objectives of the Transit Oriented Development (TOD) program and Infill Incentive Grant Program?

These are two separate programs with separate goals and objectives.

Transit-Oriented Development Program. This program is intended to increase transit and reduce vehicle miles traveled by funding housing or infrastructure within a quarter mile of a transit station. The primary policy goal is to encourage a change in land-use patterns by providing funding for various types of housing projects ranging from traditional to more transformative housing projects that are close to transit and other services. Its primary objectives are to increase the overall supply of housing, increase the supply of affordable housing, increase public transit ridership, and minimize automobile trips. The program seeks to accomplish these objectives by providing financial assistance for the development of housing and related infrastructure near public transit stations.

Infill Incentives Grant Program. The goal of this program is to fund infrastructure needed to produce more housing units for infill. To achieve this, the program is intended to fund infrastructure improvements like water, sewer, roads, and parks that will facilitate the production of infill housing, brownfield cleanup that promotes infill housing development and other related infill development consistent with regional and local plans.

17. Are you satisfied that the adopted or pending guidelines can achieve these objectives? Please explain.

Yes. HCD has worked with stakeholders throughout the State, including transit districts, local government, developers, consultants, and the Legislature to develop guidelines to reflect the multiple policy objectives of these two new programs. For TOD, the guidelines went through significant public process and input for over a year and will provide funds to those projects that will change the land-use patterns and reduce vehicle miles traveled while at the same time provide much needed housing, including affordable housing.

The Infill Program is in a more preliminary stage with the first draft of the guidelines published and comments being received. The second draft of the guidelines was

published on January 28, 2008, with the final draft scheduled for release in February. While HCD continues to receive numerous public comments, and has held several stakeholder meetings, the guidelines follow, for the most part, the legislation passed last year (SB 86). This legislation provides for much of the requirements of the program and emphasizes the amount of affordability required, readiness of the project and the types of projects that can be included in an application.

18. How do you respond to the criticisms of HCD, as noted above, in its effort to implement the program guidelines for these new programs?

These are both new programs to HCD and to the public, and there is a great deal of interest in both. For example, HCD received over 500 letters on the TOD program and over 700 specific comments on the Infill program. Since these are both statewide programs, I believe that, overall, the HCD guidelines provide a balanced approach which takes into account comments from all stakeholders. Importantly, after each round of funding, HCD continuously reviews its programs to determine whether additional stakeholder meetings are required or if changes are warranted. This ongoing review process is particularly important for these new programs.

Subprime Mortgages

19. California is on the leading edge of the subprime mortgage crisis, with the second highest foreclosure rate in the nation. In November, 2007, Governor Schwarzenegger announced an agreement with four major subprime lenders to maintain the initial, lower interest rates for some subprime borrowers whose rates are scheduled to adjust to a significantly higher rate, significantly increasing the monthly mortgage costs to homeowners. There is considerable question over the extent to which the agreement requires lenders to change business practices to the benefit of consumers. For example, according to a spokesman for GMAC lending, "We're already doing what (the Governor) suggested. Things really haven't changed." How will recent actions to address the subprime mortgage crisis, taken by the Department of Financial Institutions, the Department of Corporations, and the Department of Real Estate, directly assist California homeowners?

Since early last year, the Governor's Taskforce on Non-Traditional Mortgages has worked diligently to develop a multidimensional approach to this multidimensional problem. The Task Force consists of the departments of Corporations, Real Estate, Financial Institutions, Housing and Community Development, Consumer Affairs and the California Housing Finance Agency. Recent actions will directly assist homeowners as follows.

Governor's Agreement with Loan Servicers. The Governor's agreement with leading loan servicers will directly assist homeowners who have been able to pay their introductory interest rates, but who cannot afford their rate resets, by freezing their introductory rates for five years. This will slow the rate of new foreclosures allowing

servicers to spend more time working one-on-one with borrowers who are already in default. While some servicers were already engaging in various independent efforts to streamline loss mitigation, none of them had publicly committed to specifics prior to the negotiation of this agreement, and more importantly, none had agreed to provide periodic reporting of their results to measure their progress.

In addition to this voluntary agreement, our departments have also issued numerous advisories to their licensees urging them to work with borrowers to avoid foreclosures.

New Website Services. Homeowners are directly benefiting from the new consumer home mortgage information website which provides information in English and Spanish: www.yourhome.ca.gov and www.sucasa.ca.gov.

Consumer Education Forums. Homeowners are directly benefiting from the Administration's consumer education town hall meetings in the most affected areas of the State, where we introduce distressed borrowers including those who are already in default, to counselors, lawyers, regulators and bankers who can help them avoid foreclosure. At these events, we connect distressed homeowners directly with free counselors, legal aid lawyers and loss mitigation staff from major loan servicers. Enforcement staff from our licensing departments also attend these events to take consumer complaints. To date, we have conducted nine town halls in: Oakland, Bakersfield, Fresno, Roseville, Stockton (two were held), La Quinta, Riverside and Sun Valley. Additional meetings are scheduled in Downey (February 9th), San Diego (February 13th), Sacramento (February 16th) and Riverside (February 23rd).

Funding for Consumer Counseling. To assist various non-profit consumer counselors meet their increased staffing and overhead needs, we have also issued notices to all local jurisdictions that \$1.16 million in Community Development Block Grants (CDBG) grants can be used to fund counseling, and we have notified all California jurisdictions that receive their CDBG funding directly from the Federal Government that they can use existing funds for counseling as well. Additionally, we are applying for California's share of newly appropriated federal funds for counseling.

Public Awareness Campaign. Homeowners and prospective owners will directly benefit from the \$1.2 million we have committed to a public awareness campaign. BTH departments have provided \$1 million in conjunction with another \$200,000 from the State and Consumer Services Agency to fund a public awareness campaign announced by the Governor to advertise how consumers can get free help 24 hours a day, seven days a week in multiple languages.

Increased Enforcement. Homeowners and prospective owners will directly benefit from new enforcement techniques that include partnering with local consumer advocates to train them to spot and report licensing violations. In addition, the Department of Real Estate has launched an aggressive new advertising enforcement campaign that includes "secret shoppers" and letters to newspaper publishers reminding them of advertising restrictions.

New Regulations. Prospective homeowners will directly benefit from new regulations requiring lending decisions to consider a borrower's ability to repay the loan after the teaser rates expire. Future borrowers will also benefit from new regulations discussed in response to Question 23 below.

New Consumer Disclosure Forms. Prospective homeowners will directly benefit from new consumer disclosure forms that require calculations of payments and loan balances on all available loan programs, not just the one that the lender or broker wants to sell. In addition, a new consumer disclosure form, translated into five languages, now illustrates worst case scenario payments and loan balances under several different types of loan products and deducts the payments from the consumer's income to illustrate how much they would have left to live on. These new disclosures will be made early in the application process to allow time for consumers to conduct a thorough review and to shop around for suitable products.

As part of our efforts, we are developing performance metrics to measure the success of achieving the desired outcomes from the actions described above. Subsequently, we will collect and monitor the relevant performance data to ensure that our policy and operational direction is appropriate, and will reevaluate policies as necessary to ensure that California homeowners are receiving the maximum assistance possible.

20. Is there any estimate of how many homeowners have been able to stay in their homes as a direct result of the Governor's agreement with lenders? Please provide as much specific data as possible.

There will be approximately 500,000 subprime adjustable rate mortgages in California resetting in the next 18 to 24 months. There are no solid estimates of how many homeowners have been able to stay in their homes as a direct result of the Governor's agreement with lenders, but we currently hope the number will be approximately 100,000, or 20 percent of the 500,000 mortgages that will reset in the next 18 to 24 months.

By comparison, the American Securitization Forum (ASF), which established the framework for the Bush/Paulson Plan (which is similar to the Governor's plan) estimates two-thirds of the 1.8 million subprime mortgages nationally will be eligible for modification or refinancing under the Bush/Paulson Plan. Other analysts have estimated lower percentages will be eligible for modification under the program. For example, Credit Suisse estimates 25 to 48 percent of future resetting subprime mortgages will qualify for modification under the ASF plan and Bear Stearns estimates 48 percent of subprime loans will be eligible for modification.

Our estimate of 100,000 reflects a more conservative estimate of the number of California homeowners who will be able to stay in their homes as a result of the Governor's agreement. Of course, we hope the numbers will be greater.

21. What is the status of the Department of Corporations efforts to collect mortgage and foreclosure data from the industry and how will this data be used to help shape policy for the Administration?

The Department of Corporations (DOC), lenders, servicers, the DOC, the ASF and the Federal regulators are all simultaneously working on developing reporting mechanisms under both the Schwarzenegger Plan and the Paulson Plan. We are all working diligently to design a reporting format that captures important performance metrics using consistent definitions of terms to be able to compare data in a meaningful fashion.

In the meantime, the DOC's date collection efforts are continuing. Preliminary data through the third quarter of 2007 has been posted on the Department's website. The DOC is collecting data for November and December, and will release the data as soon as it receives complete information from its licensees. In addition, DOC is considering adjusting its survey form to capture modification information relevant to track the Governor's agreement with servicers announced on November 20, 2007.

22. Based on the data you've seen, please provide your perspective on the cause and expected duration of the housing crisis in California. What specific policy proposals would you recommend the state take to address this crisis?

Perspective on Causes of Housing Crisis. There have been a multitude of factors that have contributed to the housing crisis in California. Dating back to the mid-1990's when the federal government launched a national homeownership strategy, there was a major push to increase homeownership to record levels. Years later, around 2001, when non-traditional mortgage products were really taking hold, they were seen by many as an innovative way to increase ownership among those with low incomes and credit troubles. It is now apparent that not enough was done to prepare the market and, in particular, consumers for this phenomenon. Additional factors that have contributed to the crisis include:

- Lack of affordability that forced consumers to stretch their budgets
- Lending standards that deteriorated with increased liquidity
- Fraud, abuse and misuse by both lenders and borrowers
- Unduly optimistic assumptions of continued housing appreciation
- Investor speculation
- Lack of market absorption of increased inventory
- Decreased liquidity

Potential Duration of the Crisis. A number of factors make it very difficult to predict the duration of the crisis. The resulting problems are so multifaceted and complex that very few, if any, experts are predicting a recovery in 2008. According to the California Association of Realtors' deputy chief economist, Robert Kleinhenz, "[a] real recovery in the housing market is probably at least a year off," implying that we can expect what we experienced in 2007 to continue through 2008. According to the California Building

Industry Association's Chair, Ray Becker, his organization acknowledges that production is down from the last three consecutive years.

What we know for certain is that in the mid to latter part of 2008 the number of interest rate re-sets on the most problematic adjustable rate mortgages known as "2-28s" and "3-27s" will begin to decline. This, combined with more effective loss mitigation strategies, such as the Governor's agreement with loan servicers, could set the stage for a better real estate market in 2009.

Policy Proposals. As noted above, this is a multidimensional problem that requires multidimensional solutions. Some solutions will arise from market forces. Government policies that appear to hold the most promise include continuing existing strategies to reduce foreclosures (see response to Questions 19-21 above) and strengthening underwriting and other lending practices to avert a future crisis. Throughout the year, the Administration will be working with the Legislature to consider appropriate changes to state law.

We also need to increase the availability of affordability of affordable loan products. In this regard, the Administration is actively encouraging Congress to raise the caps on Federal Housing Administration (FHA) loans as well as Fannie Mae and Freddie Mac loan limits. These limits have been well below the median price of a California home for years, thus forcing Californians to seek non-traditional mortgages at higher interest rates than are available to the vast majority of Americans. As part of the Federal Economic Stimulus Package that is currently working its way through Congress, these limits may be raised as high as \$729,750 for one year. This would help some existing homeowners refinance into cheaper safer mortgages and would help stimulate lagging home sales by injecting liquidity into the stagnating "jumbo" loan market.

23. SB 385 (Machado), Chapter 301, Statutes of 2007, extends federal guidance on nontraditional mortgage product risks (e.g., subprime mortgages) to state-regulated mortgage lenders and brokers. This legislation requires the secretary of BT&H to ensure that the commissioners of the departments of Financial Institutions, Corporations, and Real Estate coordinate their policymaking and rulemaking efforts to apply this guidance consistently to all California entities engaged in the brokering, originating, servicing, underwriting, and issuance of nontraditional mortgage products. How is your office working with the departments of Financial Institutions, Corporations, and Real Estate to implement the requirements of SB 385? What has been accomplished thus far?

The Agency has actively monitored the implementation of SB 385, and finds the departments of Financial Institutions, Corporations and Real Estate have now fully implemented the provisions of SB 385.

Department of Financial Institutions (DFI). The vast majority of banks and credit unions licensed by DFI are federally insured, and thus were automatically subject to the

federal guidance and subprime lending statement referenced in SB 385 when they were originally issued at the federal level. Last year, DFI ordered all remaining privately insured licensees to comply as well.

Department of Corporations (DOC). DOC has issued regulations giving the guidance and subprime lending statement the force of law with respect to its licensees effective January 1, 2008. These new regulations include the new consumer disclosure form mentioned in response to Question 19 as well as new underwriting restrictions. California is now a national leader in implementing the guidance and statement as most states have not issued formal regulations giving them the force of law and have not mandated a comparative consumer disclosure form.

Department of Real Estate (DRE). DRE also issued regulations mirroring the consumer disclosure portions of the DOC regulations including the new disclosure form effective in September 2007. Prior to SB 385, which was effective January 1, 2008, DRE had no authority over the lending activity of real estate licensees. Effective January 14, 2008, DRE issued an additional set of emergency regulations implementing the lender provisions of the guidance and subprime lending statement as they apply to real estate licensees and enhancing the nontraditional loan disclosure form.

"Payday Lending" Law

24. SB 898 (Perata) (Chapter 777, Statutes of 2002) enacted the California Deferred Deposit Transaction Law. This law details the parameters for the practice of conducting deferred deposit transactions. The law requires the commissioner of the Department of Corporations to produce a report on December 1, 2007, regarding its implementation. The report must include information on the demand for deferred deposit transactions and growth, trends, and advertising practices of the industry. This report is intended to identify the strengths and deficiencies of the law as a basis for potential legislation. What is the status of the Department of Corporations' report regarding implementation of the California Deferred Deposit Transaction Law? When will it be submitted to the Legislature? How are you monitoring this issue?

I am currently working closely with Commissioner DuFauchard to finalize the report, which includes a number of policy recommendations for increased regulation of the industry. The final report has been delayed as we would like to incorporate the results of the consumer survey discussed below.

25. In response to concerns from legislators and consumer groups that the report cannot present a balanced and comprehensive view of the industry without input from payday loan customers, the Department of Corporations earlier this year submitted a request for proposals for an outside contractor to develop a consumer survey. What is the status of the consumer survey?

On August 27, 2007, DOC entered into a contract with the Applied Management & Planning Group (AMPG) to conduct a study of payday loan customers in California. This study is intended to supplement DOC's report regarding the payday loan industry, which is based on information provided by licensees, and will provide information from the consumer perspective. The AMPG study consists primarily of a consumer survey, which was validated and correlated through focus groups. The study also includes an online survey of licensees to collect data to independently validate the information provided in DOC's report.

To date, all phases of data collection have been completed. Specifically, the consumer telephone survey, the online licensee survey, and the consumer focus groups have all been completed, and the data has been compiled and analyzed. A draft report has been prepared and is currently being reviewed and edited by AMPG. The final report from AMPG will be published by March 1, 2008, consistent with DOC's commitment.

Caltrans and the Americans with Disabilities Act

26. The California Council for the Blind, Californians for Disability Rights, Inc., and other organizations that advocate for the rights of individuals with disabilities are in litigation with the state Department of Transportation (Caltrans) over the application of the federal Americans with Disabilities Act (ADA) to the state agency. At the center of the litigation is the desire of the rights groups to compel Caltrans to ensure sidewalks, crosswalks and rail crossings along state-owned right of way provide equal access and safety improvements to individuals with disabilities. The groups have been frustrated by what they perceive as Caltrans' inaction on the improvements they seek and by Caltrans' position that parts of the ADA—including provisions that would permit suit against a state agency and state officials—are unconstitutional. Representatives of the Californians for Disability Rights, Inc. and the California Council of the Blind sent a letter to you on November 8, 2007, seeking a meeting to discuss this issue. Have you met with the disability rights advocates to discuss the issues outlined above? If so, when did the meeting occur? What, if anything, was the outcome?

As discussed below in response to Question 27, the Department remains committed to complying with state and federal law, including the ADA, to ensure that individuals with disabilities are provided access to and use of pedestrian facilities. On January 30, 2008, I met with disability rights advocates, listened carefully to their concerns. The advocates asked that I immediately order Caltrans to settle the pending lawsuit or, at a minimum, to drop its challenge to the federal court's jurisdiction. I explained that it would be unfair and irresponsible to take such actions unless a more in-depth review of the facts and legal issues shows that such actions are warranted.

I agreed to further review the facts and issues to determine whether the requested intervention is warranted. While I will continue to review and monitor the issues raised in the litigation, my further review, to date, indicates my direct involvement in the litigation, especially in the manner the plaintiffs have requested, would be unwarranted

and highly inappropriate. This is mainly because other groups within the disability community disagree with the compliance approach that plaintiffs are demanding in the litigation and instead support the Caltrans approach to ADA compliance. For example, in public documents filed in the pending litigation, an executive officer of the National Federation of the Blind states that many blind Californians do not view Caltrans' actions as discriminatory, or to be subjecting blind persons to hazardous conditions as plaintiffs allege. In addition, mobility impaired individuals also filed documents in the pending litigation stating they likewise do not view Caltrans' actions as discriminatory or as subjecting them to "hazardous conditions" and indicating disagreement with the compliance approach demanded by plaintiffs.

27. What is the department's position with respect to its duties under state and federal law to provide the kind of equal access and safety improvements sought by the disability rights organizations?

Caltrans recognizes that it is a public entity under Title II of the ADA, and has a statewide ADA coordinator, as required by law, who coordinates Caltrans' ADA efforts both at its headquarters and at every district level.

As early as 1992, Caltrans developed an ADA Title II self-evaluation and a Transition Plan. The Transition Plan is updated periodically. Caltrans' ADA policy is to: (1) respond to citizen requests and complaints regarding access and use on sidewalks, curbs, and other pedestrian areas; (2) provide that newly constructed pedestrian facilities are built, to the extent feasible, in compliance with ADA access guidelines and standards; (3) ensure that, during an alteration project at a particular location, ADA upgrades to facilities are provided if such remedial work is within the scope of the alteration project; and (4) identify missing curb ramps. In accordance with existing policy, Caltrans has undertaken a substantial number of projects to provide pedestrian access to its facilities.

In addition, hundreds of Caltrans employees, including project design engineers and ADA investigators at each of its 12 districts, have attended internal access-training programs that educate these employees on current ADA guidelines, Caltrans' internal ADA policies (particularly new construction and alteration work guidelines), and how to perform ADA investigations on sidewalks and curbs. In addition, Caltrans works closely with the Federal Highway Administration to ensure ADA compliance.

28. Please summarize the department's position with respect to the constitutionality of the ADA, as it applies to the improvements sought by the disability rights organizations.

As noted above, Caltrans has devoted a substantial amount of time and resources to its ADA compliance efforts. Caltrans has never asserted in this case, or otherwise, that the ADA is itself unconstitutional. The dispute with plaintiffs involves, among other things, the proper forum for the litigation: state or federal court. The 11th Amendment protects California, as a sovereign state, from being sued in federal court over state law claims.

Plaintiffs concede this. Caltrans also asserts that Congress has not validly abrogated sovereign immunity for ADA claims in federal court. These issues are the subject of a motion scheduled for hearing in February 2008.

Department of Corporations Audit

29. In January, 2007, the state auditor issued an audit of the Department of Corporations, pursuant to a request by the Joint Legislative Audit Committee. The audit noted an overarching concern regarding the lack of accurate data compiled by the Department of Corporations. This problem extended to gauging processing time for complaints, licenses, and workforce planning. On July 30 you reported to the state auditor that the department planned to issue a request for proposals the following month for a needs assessment and feasibility study regarding replacing or updating the Department of Corporation's automated systems. What is the status of the Department of Corporation's efforts to update its information technology systems?

As noted, on July 30, 2007, we reported to the State Auditor that the DOC planned to issue a Request for Proposal (RFP) the next month for a needs assessment and a Feasibility Study Report (FSR) regarding replacing or updating the DOC's automated systems. In fact, the DOC did issue the RFP in August 2007 as planned, but did not receive any proposals. Vendors indicated that the initial RFP did not provide sufficient time to prepare a proposal and that the timeline for completing the contract was too short. The DOC re-issued the RFP with a final filing date in November 2007 and selected a vendor from the nine proposals it received. The vendor began work in December 2007, and the FSR for a new department-wide information technology (IT) system will be submitted to the Department of Finance in July 2008.

Additionally, the DOC Commissioner established the DOC's IT Steering Committee in April 2007. Committee membership is interdisciplinary and includes staff from all divisions within the DOC. The Committee is charged with developing IT policies and procedures, prioritizing IT projects, and providing recommendations to executive staff on various IT issues and on best uses of available funding to automate departmental processes.

Ultimately, the objectives for a department-wide system are to provide better and faster service to the public, provide management reports, consolidate into one database the statistical data currently in approximately 30 databases, and eliminate all freestanding legacy systems. The DOC envisions a system that will allow the electronic submittal of applications into a workflow information system, and will track: the licensee from the point at which an application is received to the point at which a license is issued, licensee history, licensee examination data, and any complaints and/or enforcement actions against a licensee. The system will also be able to provide management reports that would include, but not be limited to, statistical data, aging schedules, examination schedules, referrals to local law enforcement and prosecutors, and timekeeping.

CALIFORNIA LEGISLATURE



MEMBERS

ROY ASHBURN

VICE-CHAIR

GILBERT CEDILLO

ROBERT DUTTON

ALEX PADILLA

GREGORY SCHMIDT

SECRETARY OF THE SENATE

NETTIE SABELHAUS

APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

February 4, 2008

Gilbert A. Albiani

Dear Mr. Albiani:

The Senate Rules Committee will conduct a confirmation hearing on your appointment to the California State Exposition and State Fair Board of Directors (Cal Expo) on Wednesday, February 27, 2008. You are not required to appear, but we request that you respond in writing to the following questions. Please provide your responses by February 19, 2008.

We would also like to receive an updated Form 700, Statement of Economic Interest, by February 19th.

Statement of Goals

Cal Expo is responsible for holding the annual California State Fair, expositions, and exhibitions to highlight various industries, enterprises, resources, and products of the state.

1. *What are your goals and objectives as a director of Cal Expo? What do you hope to accomplish during your term? How will you measure your success?*

Sacramento Kings Arena

In October 2007 the Cal Expo board voted to hire Bingham Consulting Group to conduct arena negotiations with the National Basketball Association (NBA) on behalf of Cal Expo. The board unanimously approved an initial agreement to pay two of the firm's consultants \$400 per hour each for two months to negotiate a memorandum of understanding that resolves key issues between the NBA and Cal Expo.

2. *How does the board monitor the work of the Bingham Consulting Group? What is the status of negotiations with the NBA?*

Horse Racing at Cal Expo

While gambling is a growing industry in California, with about \$13 billion in gross wagering, the horse racing industry is not keeping pace. Attendance at racetracks throughout the state has dropped precipitously, from 10.9 million in 1997 to 2.9 million in 2006. There are seven racetracks and nine county fairs in California that conduct horse racing. Bay Meadows, one of the state's seven horse racing tracks, will close at the end of August 2008.

3. *What is your long-term vision for the role of horse racing at Cal Expo?*

State Fair

4. *How do you evaluate the success of the State Fair? Do you have the tools you need for this evaluation?*

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your assistance.

Sincerely,

DON PERATA

DP:ER

Cc: California Exposition and State Fair Board of Governors

*Gil Albiani
Response*
February 7, 2008

To: Don Perata, Chairman
Senate Rules Committee

Re: Confirmation of Gil Albiani
California State Exposition and State Fair Board of Directors

Senate Rules Committee

FEB 14 2008

Senator Perata,

Appointments

Thank you for your consideration in confirming my appointment to the State Fair Board of Directors. As you may be aware, this is my second appointment and my second confirmation hearing.

As regards the questions in your February 4, 2008 letter, I offer the following:

1. Statement of Goals: I have been involved with the State Fair for over 30 years. My Children first exhibited livestock in 1975. All five, at one time or another exhibited at the fair. Any director's goals should be in maintaining the State Fair as a showcase for California Agriculture and in developing youth oriented programs. Every director's goals should include making the State Fair economically viable. Doing well creates the opportunity to invest in the 40 year old infrastructure. And finally all directors goals must look at the facility as an important state asset and encourage interim programs and activities that make full use of the facility and contributes to the bottom line.
2. As regards NBA negotiations with the Bingham Group, the Cal Expo Board has appointed two directors acting as the Real Estate committee to negotiate on our behalf with representatives of the NBA. The Board of Directors meets monthly to carry out its agendized business. Under the open meeting law any negotiations conducted by a committee of 3 or more members must be opened to the public. Real estate negotiations by their very nature do not work well in open session. The Real Estate Committee gives periodic status reports to the Board in open session. As regards the current status of negotiations, it is my understanding that both parties are in the process of developing additional background information as part of a due diligence review. Whether the arena becomes a reality or not, as a Board member I believe Cal Expo should continue to look for opportunities to increase revenue from the facility both during the State Fair and throughout the year.
3. Regarding Horse Racing and the long term vision: As you are aware Cal Expo has a significant investment in a race track, stalls and paddocks, manure handling and all the ancillary facilities that support a racing program. Currently Harness Racing is the predominant racing activity throughout the year and Thoroughbred racing returns this year to Cal Expo during the 18 day California State Fair. During my time as a State Fair Director beginning in 2000 I have seen a decline in horse racing. With the investment Cal Expo has, we need to continue to support horse racing. Extended racing will require a



significant investment in the track of perhaps \$15 million dollars. Cal Expo cannot make that investment in an industry whose revenues continue to decline unless the racing industry provides some support. As an observation, the California Legislature racing Fairs and the horse racing industry need to work together and find ways, not unlike NASCAR, to increase revenues. Unlike more traditional sports that have "Celebrities", horse racing lacks that personal appeal that comes from knowing the players name and face. With every entity that has a stake in horse racing working together, I believe it is possible to raise the profile of horse racing and re-invigorate interest in the sport from the public.

4. Evaluating the Fairs success and tools needed to measure: It is my opinion having served on a multitude of boards, that the California State Fair and Exposition has a motivated and talented staff. One form of evaluation is economic; Does it pay its own way? Fairs have a unique accounting system but the most accepted accounting practice for fairs is if income exceeds expense you are doing OK. The staff provides financial information at each Board meeting that include year to date income, comparisons with prior years and all the recognized accounting reports to determine the fiscal condition. Of equal importance is in public perception. The CA State Fair competes with other Fairs in the region and with other venues and activities. The State Fair of California must be perceived as a leader in showcasing California. Agriculture continues to be a focus and must continue, but California is also known for its innovative high tech industry, the movie industry, green technology, air quality and standards, and medical centers of excellence and the Fair needs to reflect these industries as well during the annual State Fair. Cal Expo is celebrating its 40th anniversary in 2008 and the facilities need a makeover at worst and new facilities at best. The California State Fair has significant assets. It is my understanding that Fairs cannot bond against assets. Carefully crafted legislation, permitting Fairs to bond to say up to 30-35% against their assets would permit some of the old infrastructure to be improved or replaced. As regards Tools. Much of the evaluation is objective and we are provided financial statements that reflect success or failure such as income/expense and attendance data. Other evaluation is more subjective such as whether we are providing a unique experience for Fair goers and offering highlight of the best of California. My experience assures that I have the tools to make that kind of evaluation.

I hope you find the response to your questions acceptable. Please know that I have an excellent background to be a State Fair Director and a sincere interest and desire to help make it the best that it can be. I appreciate your taking time to read the letter and look forward to your confirming my appointment.

Sincerely

Gil Albani

**Response to
Senate Rules Committee
Confirmation Hearing for
Cornellus L. Gallagher**

February 14, 2008

Chairman Perata and members of the committee,

Thank you for inviting me to share my responses to your excellent questions relating to my appointment by Governor Arnold Schwarzenegger in May of 2007 to the Board of Directors of the California Exposition and State Fair.

It has been my pleasure to serve the Governor and the people of California by accepting his appointment. This experience has given me added insight into the Cal Expo Board and the governance of the California State Fair.

It has been my honor to serve on the California State Fair Agricultural Advisory council for nearly 20 years. And it is a greater honor to be asked to serve on the Cal Expo board. It is the fulfillment of a life long goal that started in my family three generations ago.

My form 700 Statement of Economic Interest is attached

Statement of Goals

Q: 1A. What are your goals and objectives as a director of Cal Expo?

My first goal is to uphold and execute the letter and spirit of my oath of office and to serve the Governor and people of California responsibly and to the best of my ability.

Second I want to assure the people who use our cal Expo facilities that they can have Big Fun in a family safe environment.

Third I want to remember our roots and continue to make the urban and rural connections that happen at our state fair where we build bridges of understanding between all attendees.

Q: 1 B- What do you hope to accomplish during my term?

First that the public perception of the safety of Cal Expo is improved and closer to the high level of safety that actually exists.

Second that more people are willing to use Cal Expo as their State Fair and trust us as the place for them to have more fun and education at a relatively low cost.

Third that we find a way to build on our deferred maintenance funding and improve the facilities.

Q: 1C- How will I measure success?

Safety will be measure by actual levels of safety on our grounds reported by our outstanding police department.

Attendance and bottom line financial performance will measure our Big Fun success.

Continued improvement in the understanding of our state leadership role in agriculture is the hardest to measure but will depend on continuing to make agricultural programs a center piece of the State Fair. What is a State Fair without youth and their live animal projects?

We have the ability to showcase an incredible event that each year highlights the Best of California in an entertaining and educational exposition.

What we lack is the ability to continue to maintain and make progress with an aging infrastructure and a growing list of major and deferred maintenance projects that now exceed \$40 million dollars collectively.

Sacramento Kings Arena

Q: 2A. How does the Board monitor the work of the Bingham Consulting Group?

The Board of Directors meet regularly in public forum to carry out its agenized business; and, the subject of the NBA Arena was brought forward under New Business at the meeting held on September 28, 2007.

At this meeting, a request was made by Moag & Company to open negotiations with Cal Expo on providing for a new NBA Arena and further development of the property, etc.

After a public presentation by Mr. Moag, the board entertained public comments; comments from various Board members and ex-officio member Assembly member Dave Jones.

At this point in time, a motion was put forward to have the Board of Directors authorize the "Real Estate Committee" (a sub-committee of the Board) and "staff" to enter into discussions with the NBA concerning a proposal to construct a new arena and for the redevelopment of Cal Expo facilities. Motion carried unanimously.

Next, a motion was put forward for the Board to authorize the Executive Committee of the Board to contract with any necessary consultants should parties desire to move forward with negotiating an agreement.

The process established by this action requires the Board Real Estate and Executive Committees to provide periodic status updates to the Board, and if appropriate, submit to the board for consideration of approval an Agreement between the NBA and Cal Expo. Motion carried unanimously.

Q: 2B - What is the status of negotiations with the NBA?

Their have been no progress reports made to the Board of Directors to date. It is generally understood that both parties are in the process of providing additional background information and that "due diligence" is in progress for each party to bring further information to the other to discuss, and a meeting to be scheduled in late February.

Horse Racing At Cal Expo

Q: 3. What is your long-term vision for the role of horse racing at Cal Expo?

Cal Expo has the facilities to conduct horse racing in the future. If extended racing meets are part of the future of this track, then several significant upgrades will be required to operate in a fashion as deemed acceptable to the California Horse Racing Board; and, to meet future water quality standards for storm run-off.

Cal Expo is in the racing business and can remain there if the racing industry supports plans for a committed investment for extended race meets at our facility. Without the support of the racing industry the economics to invest \$15 to \$20 million dollars, show little or no return for the investment.

State Fair

Q: 4A - How do you evaluate the success of the State Fair?

A well qualified staff provides us with all of the appropriate financial information to determine the fiscal integrity of our operations on a regular basis. These include detailed budget comparisons with monthly profit and loss summaries; balance sheets; cash flow analysis and regular updates of all receivables and payables according to the Board approved Policy and Procedures Manual. This information is reviewed publicly at our regular monthly meetings

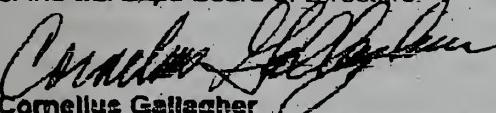
Second, we also look to the staff to provide us with detailed monthly reports on the progress of the departmental work of each fair program that is presented for the public to participate in annually.

Q: 4B - Do you have the tools you need for this evaluation?

The State Fair competes with other fairs both regionally and internationally to showcase their work and is honored annually by their trade associations with numerous awards of excellence.

As chair of the current Finance and Audit Committee I have asked staff to work with the leading fairs in the North America Fair industry to obtain comparative financial performance measures so we can be assured that we compare favorably.

Thank you again for this opportunity to serve the Governor and people of California as a member of the Cal Expo Board of Directors.


Cornelius Gallagher
Director, California Exposition and State Fair

February 18, 2008

Honorable Chairman Don Perata
California Legislature
Senate Rules Committee
State Capitol
Room 420
Sacramento, CA 95814-4900

Dear Mr. Chairman and Honorable Members of the Senate Rules Committee,

I am honored to have been selected as a candidate for board member of the California Housing Partnership Corporation. As a real estate developer of affordable housing throughout California, my organization and I share the same vision as the CHPC of creating and preserving affordable housing throughout California. The following are my responses to the questions asked of me in regards to my role with the CHPC.

1. What are your goals and objectives as a member of the California Housing Partnership Corporation? What do you hope to accomplish during your term? How will you measure your success?

As a board member, I have many goals for CHPC. My most important goal is to assist in guiding the CHPC toward carrying out its mission and for it to be a leader throughout California in the preservation of affordable housing and the federal and state programs that go with it. As an example, for years there has been an ongoing battle to reform the Section 8 Housing Voucher Program to make the rules more rationale and to help streamline the process. In order for this program to become more successful, there must be an improvement to the regulations. The CHPC is a leader in working with public agencies and owners of properties that receive these vouchers. It is necessary for the CHPC to play an active role amongst the forefront in continuing to build relationships with other agencies and coalitions to help advocate for this programs enhancement as well as other programs that are instrumental to the creation of affordable housing.

Additionally, I would like to support the CHPC in developing relationships with public agencies and non-profits to further promote affordable housing and educate these organizations on its means and methods. The CHPC is a great resource for organizations in need of training and program creation for affordable housing. It is a huge priority for me to assist in expanding the network of the CHPC and to assist in promoting its vision.

During my term I hope that I am able to broaden name recognition of the CHPC. I will be able to measure my success by ensuring that the goals and objectives for the CHPC are carried out and the corporation is able to expand its relationships base throughout the affordable housing industry.

Senate Rules Committee

FEB 19 2008

Appointment

2

2. What are CHPC's top priorities in 2008? What assistance do you believe CHPC could realistically provide that non-profits and government housing agencies would find valuable?

One of the top priorities for the CHPC in 2008 is to assist Housing Authorities and Agencies throughout California in repositioning their public housing assets. CHPC is a leader in financial training and assistance and can be vital to creating new programs and assessing existing programs and their implementations. One of the biggest problems these agencies have with their public housing assets is being able to asses their value and more importantly their use. The CHPC is able to asses if the continued life of these assets makes sense or if their resources are better utilized else where.

3. Is CHPC involved in the implementation of Proposition 1C, the Housing Emergency Shelter Trust Fund Act of 2006?

Yes. The CHPC has been involved in this programs implementation. Specifically, the CHPC reviewed the program and submitted comments to support making the program consistent and complimentary to State housing programs that are currently in existence.

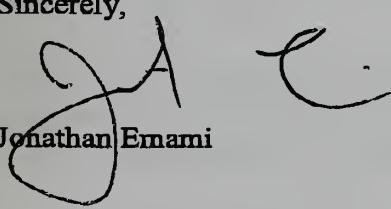
4. Does CHPC play a role in providing housing through the Proposition 63 Mental Health Services Act?

Yes. Matt Schwartz, Executive Director of the CHPC, served on a working group to help put the concept for this program together. On behalf of the CHPC, he was able to provide his knowledge and expertise in various housing assistance programs to help shape Proposition 63. Additionally, the CHPC also worked with CalHFA to help review and refine the underwriting terms of the program to improve their use.

End

To conclude, if I am confirmed by the Senate Rules Committee, I will carry out my goals and objectives that arc in line with the vision of the CHPC. I will continue to offer my knowledge and experience in working with affordable housing to the CHPC in efforts to continually improve the success and advancement of the CHPC.

Sincerely,


Jonathan Emami

CALIFORNIA LEGISLATURE

MEMBERS

ROY ASHBURN

VICE-CHAIR

GILBERT CEDILLO

ROBERT DUTTON

ALEX PADILLA



GREGORY SCHMIDT
SECRETARY OF THE SENATE
NETTIE SABELHAUS
APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

February 5, 2008

Ronald J. Garcia

Dear Mr. Garcia:

The Senate Rules Committee will conduct a confirmation hearing on your appointment to the California Housing Partnership Corporation on Wednesday, February 27, 2008. You are not required to appear, but we request that you respond in writing to the following questions. Please provide your responses by February 19, 2008.

We would also like to receive an updated Form 700, Statement of Economic Interest, by February 19th.

Statement of Goals

California Housing Partnership Corporation (CHPC) was incorporated as a private nonprofit 501(c)(3) public-benefit corporation by the Legislature in 1988. CHPC does not receive state funding but its board of directors is appointed by the governor and Legislature. CHPC was created to help preserve subsidized housing at risk of being converted to market rate and in the financial structuring of low-income housing tax credit and bond transactions.

1. *What are your goals and objectives as a member of the California Housing Partnership Corporation? What do you hope to accomplish during your term? How will you measure your success?*

Ronald J. Garcia
February 5, 2008
Page 2

Role of CHPC

CHPC's stated mission is "to assist nonprofit and government housing agencies to create, acquire, and preserve housing affordable to lower income households, while providing leadership on housing preservation policy and funding."

2. *What are CHPC's top priorities in 2008? What assistance do you believe CHPC could realistically provide that non-profits and government housing agencies would find valuable?*
3. *Is CHPC involved in the implementation of Proposition 1C, the Housing and Emergency Shelter Trust Fund Act of 2006?*
4. *Does CHPC play a role in providing housing through the Proposition 63 Mental Health Services Act?*

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your assistance.

Sincerely,

DON PERATA

DP:ER

cc: California Housing Partnership Corporation

Senate Rules Committee
Don Perata, Chairman
Attn: Nettie Sabelhaus,
Rules Committee Appointments Director,
Room 420, State Capitol
Sacramento, Calif. 958514

February 18, 2008

Nettie,

Thank you for your letter of February 5, 2005, regarding my appointment to the California Housing Partnership Corporation.

In response to your questions.

Question 1.

As many of the affordable housing financial tools are begging to "Season" it is most important that those properties, that are most at risk to increase to "Market" rents be identified and contacted prior to there expiration and to assist, where possible the retention of their affordability. The success of the CHPC will and has been measured by the number of units that have been maintained in the "Affordable Pool". As more and more of these properties become at risk, converting to market rents, the role of the CHPC will become even more important.

Question 2.

Reaching out to our Client base; local government housing agencies, CBO's (Community Based Organizations), to help identify at risk projects, providing both training and technical assistance. CHPC role as a "Central Resource Center" becomes invaluable in bringing together groups of folks that would not otherwise have access to each other. CHPC has the knowledge, background and expertise to identify the appropriate program needed from its "Tool Box" of resources.

Question 3.

CHPC was not only involved, but provided specific data to HCD. Having provided data on the Transit Oriented Development and Infill Grant programs, CHPC was instrumental in meeting its own goals of maxamize public benefit and consistency with current financing programs.

Question 4.

Yes, two of CHPCs management team have worked on the Prop. 63/Mental Health Services Act, Matt Schwartz, President of CHPC worked with CalHFA Director Terri Parker's on the initial development team. Laura Kobler, CHPC Senior Program Manager worked with CalHFA on underwriting and complimenting their program with existing programs.

I would consider it an honor to serve the people of the State of California as a member of the California Housing Partnership Corporation Board.



Ron Garcia
Councilmember
Civic & Cultural Center
1 Civic Center Circle
Brea, California 92821
www.cityofbrea.net
ofc 714-990-7704
fax 714-990-2250

A handwritten signature of Ron Garcia in black ink.

Senate Rules Committee

FEB 19 2008

Appointments

584-R

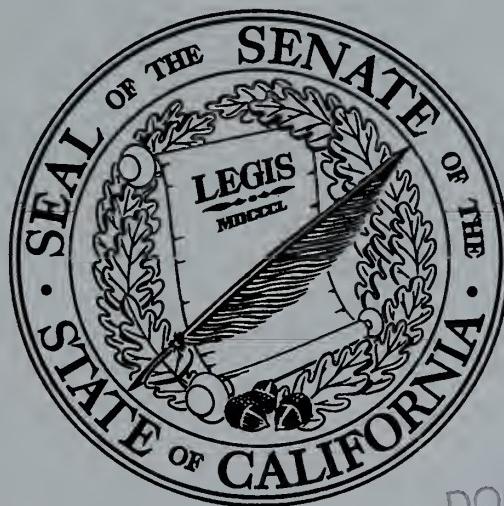
Additional copies of this publication may be purchased for \$7.75 per copy
(includes shipping and handling) **plus current California sales tax.**

Senate Publications & Flags
1020 N Street, Room B-53
Sacramento, CA 95814
(916) 651-1538

Make checks or money orders payable to **SENATE RULES COMMITTEE.**
Credit cards not accepted.
Please include stock number 584-R when ordering.

8

HEARING
SENATE RULES COMMITTEE
STATE OF CALIFORNIA



DOCUMENTS DEPT.

4972175
SAN FRANCISCO
PUBLIC LIBRARY

STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

WEDNESDAY, MARCH 5, 2008
1:33 P.M.

1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

3

4

5 HEARING

6

7

8

9

10 STATE CAPITOL

11 ROOM 113

12 SACRAMENTO, CALIFORNIA

13

14

15 WEDNESDAY, MARCH 5, 2008

16

17 1:33 P.M.

18

19

20

21

22

23

24 Reported by:

25

26 Evelyn J. Mizak

27 Shorthand Reporter

28

1 APPEARANCES

2 MEMBERS PRESENT

3 SENATOR DON PERATA, Chair

4 SENATOR ROY ASHBURN, Vice Chair

5 SENATOR GIL CEDILLO

6 SENATOR ROBERT DUTTON

7 SENATOR ALEX PADILLA

8 STAFF PRESENT

9 GREG SCHMIDT, Executive Officer

10 PAT WEBB, Committee Secretary

11 NETTIE SABELHAUS, Appointments Consultant

12 BILL BAILEY, Consultant to SENATOR ASHBURN

13 DAN SAVAGE, Consultant to SENATOR CEDILLO

14 CHRIS BURNS, Consultant to SENATOR DUTTON

15 BILL MABIE, Consultant to SENATOR PADILLA

16 ALSO PRESENT

17 KATHERINE I. DARGAN

18 State Fire Marshal

19 PAUL MASON, Deputy Director

20 Sierra Club California

21 KEITH DUNN

22 California Fire Safe Council

23 BRIAN WHITE

24 California Forestry Association

25 BOB RAYMER

26 California Building Industry Association

27 DEBORAH MATTOS

28 TREX, Inc.

1 MATTHEW WHEELER
2 California Building Officials

3 DEMETRIUS SHAFFER, Fire Chief
4 City of Newark
5 First Vice President, League of California Cities
6 Fire Chiefs Department

7 SHELDON GILBERT, Fire Chief
8 Alameda County
9 President, California Fire Chiefs Association

10 MICHAEL SMITH, Fire Chief
11 City of Fairfield
12 Past President, League of California Cities
13 Fire Chiefs Section

14 RONNY J. COLEMAN, Retired
15 State Fire Marshal

16 DENNIS MATHISEN, Fire Marshal
17 City of Roseville

18 LEE ADLER
19 Structural Engineers Association of California

20 KURT COOKNICK
21 American Institute of Architects
22 California Council

23 JOANNE DRUMMOND, Executive Director
24 Fire Safe Council, Nevada County

25 ROBIN YONASH
26 Greater Colfax Area Fire Safe Council

27 DENNIS C. REVELL, President
28 Revell Communications
American Promotional Events

RALPH HIME
California Fire Districts Association

SCOTT M. KERNAN, Chief Deputy Secretary
Adult Operations
Department of Corrections and Rehabilitation

1 JIM GOMEZ, Former Director
2 Department of Corrections

2 DAVID WARREN
3 Taxpayers for Improving Public Safety

4 RON GIVENS
5 Associated Chaplains in California State Service

6 RICHARD L. TATUM, State President
7 California Correctional Supervisors Organization

8 MATT GRAY
9 Taxpayers for Improving Public Safety

10 CHRIS BROWN, Legislative Liaison
11 Association of Black Correctional Workers

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

INDEX

	<u>Page</u>
Proceedings	1
<u>Governor's Appointees:</u>	
KATHERINE I. DARGAN State Fire Marshal ..	1
Opening Statement	1
Questions by CHAIRMAN PERATA re:	
Assessment of What Is Occurring in Lake Tahoe Area and What Needs to be Done ..	5
Public Hearing and Input of Commission Report	6
Relationship between CAL FIRE and Board of Forestry	8
Statements by SENATOR PADILLA re:	
Appreciation for Updating Requirements and Training for Accelerant Detection Dogs	9
<u>Witnesses in Support:</u>	
PAUL MASON, Deputy Director Sierra Club California	9
KEITH DUNN California Fire Safe Councils	10
BRIAN WHITE California Forestry Association	11
BOB RAYMER California Building Industry Association	11
DEBORAH MATTOS TREX, Inc ..	12
MATT WHEELER California Building Officials	12

1	DEMETRIUS SHAFFER, Fire Chief City of Newark First Vice President, League of California Cities Fire Chiefs Department	13
2		
3	SHELDON GILBERT, Fire Chief Alameda County Fire Department President, California Fire Chiefs Association	14
4		
5	MICHAEL SMITH, Fire Chief City of Fairfield Past President, League of California Cities Fire Chiefs Section.....	15
6		
7	RON COLEMAN, Retired Former State Fire Marshal	16
8		
9	DENNIS MATHISEN, Fire Marshal City of Roseville	17
10		
11	LEE ADLER Structural Engineers Association of California	17
12		
13	KURT COOKNICK American Institute of Architects California Council	17
14		
15	JOANNE DRUMMOND, Executive Director Fire Safe Council of Nevada County	18
16		
17	ROBIN YONASH Great Colfax Area Fire Safe Council	19
18		
19	DENNIS REVELL, President Revell Communications American Promotional Events	19
20		
21	RALPH HIME California Fire Districts Association	20
22		
23	Motion to Confirm	21
24		
25	Committee Action	22
26	SCOTT M. KERNAN, Chief Deputy Secretary Adult Operations Department of Corrections & Rehabilitation	22
27		
28		

1	Introduction and Support by JIM GOMEZ, Former Director Department of Corrections	22
2		
3	Opening Statement	26
4		
5	Questions by CHAIRMAN PERATA re:	
6	Implementation of AB 900	27
7	Rehabilitation and Education	28
8	Using Literate Prisoners to Tutor Illiterate Prisoners	29
9	Status of Geriatric Problem.....	29
10		
11	Questions by SENATOR CEDILLO re:	
12	Failure of Administration and Collective Bargaining Units to Reach Agreement	31
13	Effect on Staff	31
14	Influence of Politics on Wardens	32
15		
16	<u>Witnesses in Support:</u>	
17	DAVID WARREN Taxpayers for Improving Public Safety	35
18		
19	RON GIVENS Associated Chaplains in California State Service	36
20		
21	RICHARD TATUM, State President California Correctional Supervisors Organization	37
22		
23	MATT GRAY Taxpayers for Improving Public Safety	38
24		
25	CHRIS BROWN, Legislative Liaison Association of Black Correctional Workers	38
26		
27	Motion to Confirm	39
28		

1	Statements by CHAIRMAN PERATA re:	
2	Impressive Breadth of Support	39
3	Importance of Rehabilitation	39
4	Committee Action	41
5	Termination of Proceedings	41
6	Certificate of Reporter	42
7	APPENDIX:	44
8	Written Responses to Committee Questions 9 By Appointees, as well as Written 10 Statements by Appointees Not Required to 11 Appear: GORDONNA DI GIORGIO and ELISE H. 12 FROISTAD, Members, Board of Behavioral 13 Sciences; and MARIA A. BELL, Member, 14 Commission on the Status of Women	
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 P-R-O-C-E-E-D-I-N-G-S
2
3

--ooOoo--

4 CHAIRMAN PERATA: Senate Rules will begin as a
5 subcommittee in deference to all of you who came here on time.

6 Fire Marshal, step forward, please.

7 I notice that you have lots of support, but
they're hanging back, waiting to see how this goes.

8 [Laughter.]

9 CHIEF DARGAN: The fire service usually takes the
10 back row.

11 CHAIRMAN PERATA: Ah. If they start creeping up,
12 I'll tell you. It means things are going pretty well.

13 [Laughter.]

14 CHIEF DARGAN: Thank you very much.

15 Subcommittee of two means that this will take
16 longer?

17 SENATOR ASHBURN: We go fast, so it should go
18 much quicker.

19 CHAIRMAN PERATA: Now we have three Members.

20 What would you like to say to us?

21 CHIEF DARGAN: As most folks who prepare for
22 Senate confirmation hearings, I've stuffed my head full of
23 facts, anticipating, you know, all the things you might want to
24 ask.

25 And then it dawned on me a couple of days ago
26 that probably what you want to hear most about is really who I
27 am, where I come from.

28 CHAIRMAN PERATA: Yes.

1 CHIEF DARGAN: So, I've been a line firefighter
2 since I was 18 years old. 1977 is when I started in the fire
3 service. I was fresh out of high school out of Half Moon Bay,
4 and I started with CDF as a seasonal firefighter, and I stayed.
5 1977 was a banner year at that time for fires in California, and
6 I fell in love with the fire service.

7 And I went to Cal Poly. I graduated in National
8 Resource Management in the early '80s. There I focused on land
9 use planning, resource management, and at the time fire, which
10 was a new kind of study, field of study, for Cal Poly to offer
11 through the Resource Management Program.

12 I stayed with the fire service. I worked in San
13 Luis Obispo, Southern California area, Nevada County, Napa
14 County, Central Coast, Monterey. And that's been the span of 30
15 years now in the career in the fire service.

16 I've been a volunteer firefighter in the Central
17 Coast. I've served as an elected district board member for a
18 service district that offered fire services. So, I've been kind
19 of in all different aspects of the fire service, from volunteer
20 to a career firefighter, to an elected official representing the
21 fire service.

22 And then I came to the State Fire Marshal's
23 Office two years ago at the request of the Governor's Office and
24 Chief Grijalva as the Assistant State Fire Marshal.

25 I was a line firefighter, or kind of one of those
26 fire suppression firefighters for 20 years. In 1997, I was
27 working in Nevada County, and I became -- I was working as a
28 battalion chief at the time and an air attack officer doing

1 wildland firefighting. And I had the opportunity to get engaged
2 with the citizens at Nevada County and helped found one of the
3 first Fire Safe Councils in the state. In fact, I think we were
4 one of the first incorporated Fire Safe Councils, Nevada County,
5 and I was considered to be one of the founding members. I
6 served as the first chair.

7 And I got very focused in the fire -- the
8 wildland-urban interface fire issues, which stayed with me for
9 the previous [sic] ten years. And what it did for me is give me
10 this commitment to fire prevention that's brought me to the Fire
11 Marshal's Office.

12 And so, all those years of being a firefighter on
13 the line suddenly translated to me into a realization that if I
14 wanted to make a difference, more than just one emergency at a
15 time, one life or one fire at a time, it was to get involved in
16 fire prevention and focus on the big, fundamental issues that
17 underlied the problems. And that brought me to the Fire
18 Marshal's Office.

19 CHAIRMAN PERATA: Are you finished?

20 CHIEF DARGAN: Well, I'll be happy to share my --
21 I have four over-arching goals that I come with --

22 CHAIRMAN PERATA: Tell us about the goals.

23 CHIEF DARGAN: -- or come with me to the Fire
24 Marshal position.

25 One is a leadership in fire prevention. I
26 believe strongly that we have -- we need more voices in the fire
27 prevention world in California. And the State Fire Marshal
28 serves as the top voice for fire prevention. And that's

1 something that I represent to the public, to the Legislature, to
2 the Governor's Office, and back into the fire service
3 personally.

4 Second, wildland-urban interface issues, I think
5 those are some of the biggest fire problems the state has, and I
6 have specific goals related to things within the wildland-urban
7 interface fire problem that the state has.

8 Thirdly, better use of our data and information
9 technology. I think that we have improvements that we can make
10 within the fire service, talking about what's actually
11 occurring, and how do we use information and information
12 technologies to help us fight fires better and predict what our
13 problems are.

14 And then finally, not last of all, but included
15 in my top four is our state fire training system. The State
16 Fire Marshal's Office oversees state firefighter training and
17 works in partnership with community colleges, the Jack Program,
18 local communities, fire departments, and offers fire service
19 training for volunteer and career. And that's something that
20 needs to be improved in the state as well.

21 Thank you. I would like to answer questions,
22 Senator.

23 CHAIRMAN PERATA: Do you have any family here?

24 CHIEF DARGAN: Present today? I asked them to
25 just watch.

26 [Laughter.]

27 CHAIRMAN PERATA: That's how you got to be where
28 you are.

1 The front rows are starting to fill up, so I
2 think you can relax a little bit now.

3 I wanted to talk specifically about, we've had
4 lots of urban forest fires this year. But the Tahoe experience,
5 unlike northern San Diego County, nobody confuses Tahoe with
6 being an urban area. And yet, we've built in the forest, and we
7 were supposed to have defensible space. Most don't, apparently.

8 How would you assess what's going on up there,
9 and what should we be doing?

10 Personally, I don't want to pay the tax for them,
11 as much as I like people who live in Tahoe. But it seems to be
12 inequitable. If somebody's not doing the righteous thing, I
13 don't know.

14 I'm not asking for your comments on taxes. I
15 know what those probably are.

16 But just, what's going on up there? How do you
17 manage that problem?

18 CHIEF DARGAN: Tahoe did point out to us that
19 it's not just a Southern California problem.

20 We had 21 homes on the Moonlight Fire in Plumas
21 County earlier this year. We had 24 homes that were lost in
22 Santa Clara County last year, and then the 254 that were lost in
23 the Tahoe area.

24 So, what you're referring to, what you're
25 pointing out is something that I think the message is still very
26 important, and that is: This is a collective responsibility.
27 Homeowners have a responsibility for their own defensible space
28 around their houses. Communities and local governments have a

1 responsibility to develop the proper land-use planning, so that
2 we're dealing with hazards and mitigations ahead of time. And
3 the fire service, and those that support it, have a
4 responsibility to be prepared for any kind of event.

5 But specifically up at Tahoe, there had been
6 prior to the fire a confusion amongst regulatory agencies and
7 the public about what was achievable, and how to go about
8 defensible space, specifically in regards to balancing the
9 erosion that is necessary for the quality -- clarity of Lake
10 Tahoe, and in the surface covering around the houses, and
11 whether or not pine needles should be removed or not. That was
12 a focal point of public debate after the fire.

13 The Tahoe Commission is addressing that issue, as
14 well as the other parts of defensible space around the
15 structures. In this particular definition, I'm talking about
16 the hundred feet.

17 The surface fuels were -- we are developing
18 recommendations, and actually the fire chiefs have worked
19 closely with the Tahoe Regional Planning Agency and have
20 achieved a full consensus on the nine points for defensible
21 space that was being looked for.

22 So, I think your question is that the Commission
23 is very closely looking at defensible space. And we think that
24 we've achieved consensus between the regulatory agencies and the
25 fire service on how to do it.

26 CHAIRMAN PERATA: When that commission report is
27 finished, that will be subject to a public hearing?

28 CHIEF DARGAN: It's not subject to a public

1 hearing in the sense that it's a recommendation to the governors
2 for California and Nevada.

3 However, we are going through a public process
4 right now, fully agendized, and we've bent over backwards.
5 Sometimes it's caused me to lay awake at night, hoping that we
6 did the right thing. We've bent over backwards, allowing full
7 public input. Anyone could have made a recommendation to the
8 Tahoe Fire Commission that was duly considered.

9 CHAIRMAN PERATA: But there's not going to be any
10 summary opportunity? You've taken the testimony, the report's
11 written, and then it's shipped off to the Governor?

12 CHIEF DARGAN: No. We will be -- we will
13 complete our work on March 21st. That's our scheduled time to
14 finish wrapping up our Draft Recommendations. At that point,
15 we'll have a chance to kind of publish the Draft Report and make
16 sure that that, you know, any last-minute issues that, you know,
17 might be surfaced, that we have a chance to address. And then
18 at that point, it's up to the Governor's Office to let us know,
19 well, we'll issue a final Draft Report subsequent to that.

20 CHAIRMAN PERATA: Is the draft --

21 CHIEF DARGAN: But it's not a public hearing per
22 se.

23 CHAIRMAN PERATA: Is the draft put into
24 circulation for further comments by the public, like an EIR
25 would be?

26 CHIEF DARGAN: It -- the full copy of the draft
27 will be available with our March 20th meeting. And then that
28 full copy will be publicly available for some weeks after that.

1 CHAIRMAN PERATA: I'm just wondering, if I don't
2 agree, or if whatever I said was not incorporated, how would I
3 fix it?

4 I mean, going to the Governor's Office is
5 probably not going to be very appealing. Is there any
6 opportunity for somebody to disagree?

7 CHIEF DARGAN: Absolutely. And they do bring up
8 points during our committee meetings. Everything that we --

9 CHAIRMAN PERATA: So, these are open hearings,
10 and this is --

11 CHIEF DARGAN: Very much so. And everything that
12 we have in terms of a recommendation is, in detail, available on
13 the Resources Agency web site in its entire language. So, there
14 is not single document, or consideration, or a finding, or a
15 recommendation that the Tahoe Commission is reviewing right now
16 that is not currently publicly available.

17 CHAIRMAN PERATA: How would you characterize the
18 relationship between the Board of Forestry and CAL FIRE?

19 CHIEF DARGAN: We all work pretty closely
20 together. We are -- CAL FIRE hasn't changed its statutory
21 responsibilities or authorities at all. The State Fire
22 Marshal's Office is now an integrated part of CAL FIRE, has been
23 for 10 years.

24 The Board of Forestry is the policy oversight
25 body for CAL FIRE. As such, the director vets policy decisions
26 with the Board of Forestry, so does -- well, the State Fire
27 Marshal has also the State Board of Fire Services that we work
28 with on a statutory basis.

1 But we do work with the Board of Forestry, try to
2 present to them our direction. We publish our annual Work Plan
3 and make that available to them as well.

4 So, closely.

5 CHAIRMAN PERATA: Alex.

6 SENATOR PADILLA: I just want to thank you for
7 working with my office on the arson dogs conversation.

8 CHIEF DARGAN: Yes, the accelerant detecting
9 dogs.

10 SENATOR PADILLA: Updating the requirements and
11 training for accelerant detection dogs. So, I wanted to thank
12 you for that.

13 CHIEF DARGAN: Thank you. It's been -- well, we
14 should be ready in May with our recommendations.

15 CHAIRMAN PERATA: Just the dogs?

16 SENATOR PADILLA: Public safety puppies.

17 CHAIRMAN PERATA: Anybody here who'd like to
18 speak in favor of the nominee? It doesn't have to be long.

19 CHIEF DARGAN: Should I leave or stay here?

20 CHAIRMAN PERATA: No, stay right there. You
21 should look at your accusers.

22 [Laughter.]

23 MR. MASON: Paul Mason for Sierra Club
24 California.

25 It doesn't really feel like an accuser when
26 you're actually getting up to support.

27 CHAIRMAN PERATA: It's kind of rare for you to be
28 here. That's great.

1 MR. MASON: It's nice to be able to express our
2 unqualified support for somebody over at CAL FIRE.

3 I've had an opportunity to work with Ms. Dargan
4 since before she was the State Fire Marshal, and she was working
5 for the assistant -- or working for the previous Fire Marshal,
6 Chief Grijalva, who's now over as the Chief at CAL FIRE.

7 And I've been consistently impressed with her
8 openness and competence, and the ability to bring in, you know,
9 some of the resource management background and a broader
10 understanding of how homes out there on a landscape, both in the
11 urban and the more rural environment interact with the landscape
12 around, and that it's not just, you know, doesn't all happen in
13 a vacuum. And then looking at building materials, and where
14 homes are situated, and there's a much larger question there.
15 And I think that those are the things that we need to be looking
16 at as we try and figure out how homes and fire co-exist in
17 California in the 21st Century.

18 Thanks.

19 CHAIRMAN PERATA: Thank you.

20 MR. DUNN: Senator, Keith Dunn here for the
21 California Fire Safe Councils in strong support of Ms. Dargan's
22 nomination.

23 She is committed to helping provide California
24 communities with the tools necessary to defend themselves
25 against wildfires, and we look forward to continuing to work
26 with her and her folks.

27 Thanks.

28 CHAIRMAN PERATA: We're taking all the

1 nonuniformed people first.

2 [Laughter.]

3 MR. WHITE: Good afternoon, Chairman and Members
4 of the Committee.

5 California Forestry Association, Brian White. We
6 wholeheartedly support Kate Dargan for this -- for this
7 position.

8 We've had a lot of experience working with her on
9 building standards issues as it relates to wildfire, urban
10 interface, and we think that she'll continue to do a great job
11 in dealing with building standards issues in the future.

12 We know that fire and fuel management issues will
13 be an important topic this year, and we look forward to working
14 with her and the administration and Members of the Legislature
15 on this.

16 CHAIRMAN PERATA: Thank you.

17 MR. RAYMER: Thank you, Mr. Chairman, Senators.
18 I'm Bob Raymer, representing the California Building Industry
19 Association, and we're in strong support of her confirmation.

20 We've worked with Kate for about six to seven
21 years on a variety of building code issues. As you've already
22 heard, California was the first state in the nation to adopt a
23 set of statewide urban-wildland interface regulations. That
24 process took quite a while, but Kate brought all the factions
25 together -- the product manufacturers industry, the fire
26 service, local government, and the testing laboratories -- which
27 is a very diverse group, and gained consensus on this. At the
28 Building Standards Commission meeting that was to adopt these

1 regulations, there wasn't one person speaking in opposition to
2 the regulations. It was a unanimous vote, which is a testament
3 to her ability to reach consensus.

4 And while most agencies, after they adopt
5 regulations, move on to adopt another set of regulations, Kate
6 has focused a tremendous amount of energy on educating and
7 training on a statewide basis. Our members have been given
8 plenty of opportunity to learn these regulations, and I would
9 hope other agencies could use that as an example.

10 Thank you.

11 CHAIRMAN PERATA: Thank you.

12 MS. MATTOS: Good afternoon, Chairman and Members
13 of the Committee. My name is Deborah Mattos. I represent TREX.
14 TREX makes composite work decking.

15 We went through the exact same hearings and
16 regulatory process that Kate conducted very fairly with all
17 sorts of parties involved, with all different viewpoints. And I
18 can honestly say, in all my blank years that I've been around
19 here, it was one of the more fair processes that I've ever been
20 involved in.

21 We wholeheartedly support her and enjoyed working
22 with her.

23 CHAIRMAN PERATA: Thank you.

24 MR. WHEELER: Last one in the lobbyist uniform.

25 Matt Wheeler, representing California Building
26 Officials, the heads of 500 local building departments.

27 All I can really say is, what a pleasure it has
28 been to work with Chief Dargan. In many respects, we see her as

1 the state building official, and sometimes building and fire
2 don't always see eye-to-eye.

3 And we've appreciated the consensus, the open
4 door, and just basically the availability to our side of the
5 code enforcement industry.

6 Thank you very much.

7 CHAIRMAN PERATA: You stopped just this side of
8 groveling. That's good.

9 [Laughter.]

10 CHIEF SHAFFER: Chair and Members of the Senate
11 Rules Committee, out of respect for you, I wrote down my notes
12 because I love to talk, so I'm going to keep this very short,
13 and I love to brag about Kate. So, I'm going to keep this as
14 brief as possible.

15 My name is Demetrious Shaffer. I'm the Fire
16 Chief for the City of Newark, California. I'm also the First
17 Vice President for the League of California Cities Fire Chiefs
18 Department.

19 It is my pleasure to represent the League of
20 Chiefs in voicing our support for Chief Katherine Dargan for the
21 position of California State Fire Marshal.

22 In addition to Chief Dargan's significant
23 experience in command roles on large incidents such as the Cedar
24 Fire, she has over 25 years of experience in the fire service as
25 a seasoned fire ground commander, a battalion chief, county fire
26 marshal, assistant fire chief, Assistant State Fire Marshal,
27 just to name a few.

28 She has extensive experience in fire suppression,

1 fire prevention and suppression, supervision, management,
2 strategic planning, and land-use planning. Chief Dargan earned
3 a Bachelor of Science Degree in Natural Resource Management from
4 Cal Poly and serves as the co-chair of the Northern California
5 Fire Prevention Officers Urban-Wildland Committee, co-chair of
6 the California Wildland-Urban Interface Building Standards
7 Committee, and a member of the Napa County Watershed Board.

8 Chief Dargan has a solid reputation as a fair and
9 objective leader who values diversity and recognizes the
10 importance of communication. Her breadth of knowledge, unique
11 experience, strong work ethic, and demonstrated integrity is why
12 the League Chiefs support Chief Katherine Dargan to serve the
13 residents of California as the California State Fire Marshal.

14 Thank you very much.

15 CHAIRMAN PERATA: Thank you.

16 CHIEF GILBERT: Mr. Chairman, honorable Committee
17 Members, my name is Sheldon Gilbert. I am Fire Chief of the
18 Alameda County Fire Department and also the President of the
19 California Fire Chiefs Association.

20 I'm here to express our support for Chief Dargan
21 being confirmed as the State Fire Marshal.

22 We've had the privilege of working with her on a
23 number of issues over the past few years, things like the
24 implementation of a new fire code, a Blueprint 2020 Strategic
25 Planning for the future of California fire service training,
26 working with her on the Blue Ribbon Fire Commission Task Force
27 and the recommendations that came out of the 2003 as well as the
28 2007 fire seasons.

1 She's worked with Fire Scope on a number of
2 technology issues and how we can enhance our situational
3 awareness capabilities statewide on these large fires, and she
4 works with us on a daily basis on code interpretation and local
5 as well as statewide issues.

6 So, we're very pleased with our interaction with
7 her and support her in this endeavor and would strongly
8 recommend her.

9 Thank you.

10 CHAIRMAN PERATA: Thank you.

11 Are those eight stars like 40 years?

12 CHIEF GILBERT: Only 20, going on 25.

13 CHAIRMAN PERATA: Hello.

14 CHIEF SMITH: Hello, Senator and Members of the
15 Rules Committee. My name is Michael Smith. I'm the Fire Chief
16 of the City of Fairfield, and I am the immediate past President
17 of the League of California Cities Fire Chiefs Section.

18 And it is our pleasure to support Kate Dargan for
19 the position -- confirmation as State Fire Marshal.

20 We've worked with Kate for a very long time on a
21 number of issues, more recently in the position of State Fire
22 Marshal. Kate has brought forth the state's perspective on
23 issues, and we in turn as the League have been able to give her
24 the local perspective on the same issues. And we have worked
25 very closely together, and we highly support her.

26 Most importantly, Kate is dependable, and she's
27 accessible, and she is very responsive to our needs. And for
28 those reasons we support her for confirmation as State Fire

1 Marshal.

2 Thank you.

3 CHAIRMAN PERATA: Thank you.

4 CHIEF COLEMAN: Mr. Chairman and Members of the
5 Committee, I may have the most unusual perspective of any of the
6 testimony given here today, because I was the State Fire Marshal
7 many years ago.

8 CHAIRMAN PERATA: Let's have your name in case
9 we've forgotten.

10 CHIEF COLEMAN: My name is Ron Coleman. I'm part
11 of the Over-the-hill Gang, as apart from the people back here
12 with the badges.

13 My reason for being here today to testify on
14 behalf of the confirmation of Kate is two-fold. Number one is,
15 having the opportunity to have done this job, I know what it
16 takes to take it on. And I've had the opportunity to work with
17 this officer now for many, many years, not just on the items
18 since I retired, but even before.

19 And I know that she has three qualities that I
20 truly treasure. The first quality she has is, she's a
21 competent, capable individual.

22 Secondly is, she is highly committed to the tasks
23 that she's confronted with.

24 And thirdly, she is in my opinion one of the
25 strongest consensus builders I've ever had the chance to work
26 with.

27 And as a former Fire Marshal, I'd like to add my
28 voice to everybody else in this room, saying that this officer

1 sitting next to me is highly qualified to be the State Fire
2 Marshal of California.

3 CHAIRMAN PERATA: Thank you, sir.

4 CHIEF MATHISEN: Good afternoon. My name's
5 Dennis Mathisen, and I am the Fire Marshal for the City of
6 Roseville.

7 I just wanted to come today to lend our support
8 for Chief Dargan for the position of State Fire Marshal. And
9 from a local fire marshal's perspective, we look up to the State
10 Fire Marshal's Office for guidance on many, many issues. And to
11 have somebody of Chief Dargan's caliber at the helm of that
12 agency gives us a lot of peace of mind.

13 With that, I'd just like to again say we lend our
14 support. Thank you.

15 CHAIRMAN PERATA: Thank you.

16 MR. ADLER: Mr. Chairman and Members, Lee Adler,
17 Structural Engineers Association of California.

18 And we're very much in support of Ms. Dargan's
19 confirmation.

20 And Mr. Chairman, I'm glad to see that you eschew
21 ties as well. Thank you.

22 MR. COOKNICK: Good afternoon, Mr. Chairman and
23 Members of the Committee. Kurt Cooknick, representing the
24 American Institute of Architects, California Council.

25 I'd like to offer our strong support for this
26 nomination. We strongly supported the endorsement or the
27 appointment of Kate.

28 She's endeared herself to our members with her

1 work in the area of wildland-urban interface and the building
2 code process. And we would really like to see her advance to
3 this position.

4 CHAIRMAN PERATA: You represent the fireworks
5 guys?

6 MR. COOKNICK: American Institute of Architects.

7 CHAIRMAN PERATA: Oh, architects, I'm sorry. I
8 thought you said pyrotechnics. I thought, she really does have
9 well-rounded support.

10 [Laughter.]

11 MR. COOKNICK: They may be here, but I cannot say
12 for sure.

13 CHAIRMAN PERATA: Thank you.

14 MS. DRUMMOND: Good afternoon, Mr. Chairman,
15 honorable Members of the Committee.

16 My name is Joanne Drummond. I'm the Executive
17 Director for the Fire Safe Council of Nevada County. I'm also
18 the Chair for the Society of American Foresters, Sacramento-
19 Tahoe Chapter.

20 And we just wanted to echo the comments that
21 you've been hearing this afternoon about how capable, competent,
22 and compassionate Kate is about the issue. You've heard from
23 her bio that she really did start our council, and we think she
24 should be credited with really the concept of Fire Safe Councils
25 throughout the state because of her passion and drive to get the
26 community involved not only for their defensible space, but also
27 for implementing overall fuel reduction projects, fuel breaks,
28 and things that can make difference when a wildfire strikes.

1 So, please add my name to her support. Thank you.

2 CHAIRMAN PERATA: Thank you.

3 MS. YONASH: Robin Yonash, Great Colfax Area Fire
4 Safe Council.

5 I'm also here in support of Kate. Fire Safe
6 Councils are the place where the education and the projects
7 happen on the ground to improve the wildfire safety of our
8 communities. And I'm just thrilled to have someone as the State
9 Fire Marshal who has a background with Fire Safe Councils, and I
10 definitely support Kate in being confirmed.

11 Thank you.

12 CHAIRMAN PERATA: Thank you.

13 MR. REVELL: Good afternoon, Chairman Perata,
14 Vice Chairman Ashburn, honorable Members of the Committee.

15 My name is Dennis Revell. I'm the President of
16 Revell Communications.

17 It's my honor and pleasure to be here today, both
18 as a professional who's been involved in the Capitol for over 25
19 years, as well as on behalf of our client, American Promotional
20 Events, the state's largest and leading wholesale distributor of
21 state-approved fireworks.

22 [Laughter.]

23 CHAIRMAN PERATA: I could feel it.

24 [Laughter.]

25 MR. REVELL: It is indeed an honor to
26 unequivocally be here today in support, Mr. Chairman, of this
27 candidate for confirmation.

28 I've circulated a copy of our formal remarks in

1 support of Chief Dargan.

2 It has been a privilege to work with her since
3 her appointment in 2005 as Assistant State Fire Marshal, and
4 most recently over the last year as State Fire Marshal,
5 particularly working with a bill that originated out of this
6 House by Senator Calderon, SB 839, and the first major reform
7 dealing with the criminal penalties and repercussions of the use
8 of dangerous illegal fireworks in California.

9 And Chief Dargan and her department, and the
10 entire CAL FIRE staff deserve a great deal of credit for the
11 progress that we have made, the consensus that there is between
12 the industry and nonprofit organizations that sell state-
13 approved fireworks.

14 We look forward to the full and complete
15 implementation of that legislation and the affect it will have
16 on the safety of California, both the individuals and their
17 property.

18 And I join the chorus of public servants as well
19 as private sector individuals here today in full support o her
20 confirmation. Thank you.

21 CHAIRMAN PERATA: Thank you.

22 MR. HIME: Mr. Chairman and Members, Ralph Hime
23 for the California Fire Districts Association.

24 In the interest of time and your admonition,
25 Mr. Chairman, I will be brief and simply add our concurrence
26 with all the speakers that are in support of Chief Dargan,
27 truly an extraordinary individual. We are very pleased to
28 support her confirmation and would respectfully urge the

1 Committee to do as well.

2 CHAIRMAN PERATA: Thank you.

3 Anyone here in opposition? Smart.

4 [Laughter.]

5 CHAIRMAN PERATA: Pleasure of the Committee?

6 I just wanted to suggest one thing to you. We
7 had not too many weeks ago four members of the Forestry Board
8 here. We spent time talking about the same kinds of issues
9 about defensible space, and all of that.

10 They seemed to have a pretty good perspective on
11 it, but didn't feel like anybody's really asking them, or they
12 weren't fully engaged.

13 I just pass that along to you as something that
14 you might want to pursue with them.

15 CHIEF DARGAN: Thank you, and we will.

16 SENATOR ASHBURN: Motion.

17 CHAIRMAN PERATA: We have a motion to approve.
18 Call the roll, please.

19 SECRETARY WEBB: Cedillo.

20 SENATOR CEDILLO: Aye.

21 SECRETARY WEBB: Cedillo Aye. Dutton.

22 SENATOR DUTTON: Aye.

23 SECRETARY WEBB: Dutton Aye. Padilla.

24 SENATOR PADILLA: Aye.

25 SECRETARY WEBB: Padilla Aye. Ashburn.

26 SENATOR ASHBURN: Aye.

27 SECRETARY WEBB: Ashburn Aye. Perata.

28 CHAIRMAN PERATA: Aye.

1 SECRETARY WEBB: Perata Aye. Five to zero.

2 CHAIRMAN PERATA: Congratulations, five-zero.

3 CHIEF DARGAN: Chairman and Senators and staff,
4 I'm humbled by the observations that people have made today, and
5 thank you most sincerely.

6 CHAIRMAN PERATA: Thank you. Congratulations.

7 I'd like to welcome all of you to Act Two. The
8 first one went really well. We hope this one goes equally as
9 well, maybe even faster.

10 Scott Kernan is here, and you brought an able
11 person to introduce you, so please do.

12 MR. GOMEZ: Good afternoon, Senator Perata and
13 Members of the Committee.

14 My name's Jim Gomez. I'm here as a citizen
15 today. I'm a former Director of Corrections. I had the
16 opportunity to be Chief Deputy Director of Corrections for
17 Governor Deukmejian for six years, and Director of Corrections
18 for Governor Wilson for six years in the '90s.

19 I also had the opportunity to do transition for
20 Governor Schwarzenegger in the Corrections area when he came
21 forward.

22 To give you perspective, when I came to
23 Corrections in '83, we had 8,000 inmates -- 8,000 staff, 30,000
24 inmates, and a \$380 million budget. That \$380 million, that was
25 the deficiency when I came back in 2003 to do transition. So,
26 things have changed.

27 I'm here today because of Scott Kernan, and in
28 particular his mother, Peggy Kernan. Many of you may not know

1 that Peggy Kernan was a warden at the Department of Corrections.
2 She has a long history as a Department of Corrections
3 individual. She worked 32 years in a career at the Department
4 of Corrections. She was one of those long-time employees, well
5 respected. She was one of the first female -- in fact, she was
6 the second female warden that was appointed to run a men's
7 prison in the State of California. And it was difficult for
8 women in the '80s, when she grew up and was a significant
9 force.

10 Peg passed away about five years ago. But before
11 she did, she called me and she made me promise that I would come
12 to Scott's confirmation relative to him being a warden. So, I'm
13 here today.

14 CHAIRMAN PERATA: Does anybody have a motion?

15 [Laughter.]

16 MR. GOMEZ: I'm here today because you all
17 changed the law. He no longer can be confirmed as a warden.
18 You now confirm the Central Office types.

19 Peg was very smart. She knew this man had a lot
20 of potential and the ability to become a leader in the
21 Department of Corrections. So, I did not testify at his warden
22 confirmation, but I am here today to testify at his appointment
23 as the Chief Deputy Secretary for Adult Operations.

24 I want to give you a few traits, then turn it
25 over to Scott to talk about himself. But he has some of the
26 same -- same traits that Peggy Kernan had, and that when I
27 appointed her warden, or Governor Wilson appointed her warden
28 made us so proud of what we had done.

1 He cares. And I think you should always
2 remember, in the Department of Corrections if you don't care,
3 you shouldn't be in a high level position. The most important
4 ingredient I've found over time were people that cared about
5 others. They cared about inmates; they cared about staff; they
6 cared about doing the right thing.

7 He's honest and hard working. He very much has
8 led a path in the Department of Corrections that I think is
9 admirable, and he's a hard worker. It doesn't matter whether
10 it's 7:00 o'clock in the morning or 7:00 o'clock at night, he's
11 there.

12 He understands and believes in program in the
13 Department of Corrections. That's a very important, very
14 important quantity. He knows that good security and good
15 program go together, and that in order for an institution to run
16 well, it has to have good program. We've seen over a period of
17 about eight to ten years, there were a lot of program dismantled
18 in the Department of Corrections. We're now seeing that come
19 back under Governor Schwarzenegger, and Jim Tilton, and Scott
20 Kernan, and others.

21 He understands the value of training inmates, and
22 as he also understands the value that that places for staff. He
23 really very much believes in accountability. By accountability,
24 I mean accountability of staff to do their job, and
25 accountability of inmates to program and to be accountable for
26 what they do. It's important in the business of corrections
27 that accountability is something everybody agree on.

28 He's fair. He treats people in similar

1 circumstances in a similar manner. Whether he knows them or
2 doesn't know them, it should be the facts that -- that guide the
3 case.

4 He has tremendous integrity. I think it's
5 important in the Department of Corrections, probably as
6 important as any department in all of government, that your
7 honesty and integrity are unquestioned.

8 And last, I would say that he's a proven leader.
9 He spent 25 years with the Department of Corrections. He's
10 moved up from the bottom of the organization to the top of the
11 organization. He's paid his dues along the way. He's learned
12 budget. He's learned custody. He's learned operations, and he's
13 learned parole. He's the right person for the job.

14 So, I'll conclude my remarks by saying that both
15 Peggy Kernan and I recommend that you confirm him five-zip.

16 CHAIRMAN PERATA: Thank you, sir. Appreciate it.
17 Welcome.

18 MR. KERNAN: Thank you.

19 May I introduce my wife.

20 CHAIRMAN PERATA: Please do.

21 MR. KERNAN: I'd like to introduce my wife, Dana,
22 with the patience of Job.

23 My daughter, Devon. My sister, Darby, who works
24 for Senator Corbett. And I believe Kip Lipper, who might be in
25 the room, I think, or is coming, that works for you.

26 CHAIRMAN PERATA: He's always late.

27 [Laughter.]

28 MR. KERNAN: I hope that you'll understand that

1 relatives cannot pick their party affiliation.

2 [Laughter.]

3 CHAIRMAN PERATA: They mentioned that.

4 I also want to point out that your wife was
5 nodding when he said you work from 7:00 until 7:00.

6 [Laughter.]

7 MR. KERNAN: Mr. Chair and Members, I come before
8 you with 25 years of experience, as Mr. Gomez said, working up
9 from correctional officer to a warden, and have worked as a
10 director and deputy director, and in my current position as
11 Chief Deputy Secretary.

12 I feel very privileged and honored to supervise
13 the 60,000 employees and 300,000 offenders that we have.
14 Secretary Tilton asked me to come aboard when he took over as
15 Secretary, and he works from a position that the system is a
16 huge massive system with a lot of problems, and that we have to
17 be problem solvers and treat everybody with -- ethically.

18 CHAIRMAN PERATA: Take a moment.

19 [KIP LIPPER entered the hearing room.]

20 CHAIRMAN PERATA: It's a good thing this wasn't
21 life or death.

22 [Laughter.]

23 MR. KERNAN: The 60,000 employees I have work
24 hard every day under terrible, violent circumstances. And they
25 do their job, and they deserve a consistent, common sense
26 leadership.

27 I'm very proud to work with Secretary Tilton and
28 Undersecretary Reynolds and the emphasis in operations,

1 understanding that the massive humanity that we must supervise,
2 there's going to be problems in our system.

3 I hope that I am judged by how I proactively
4 address those problems, and am very confident that I and my
5 staff, if confirmed, will go forward and move this department to
6 one of the departments, that is corrections departments, that is
7 the best in the world.

8 And I'm happy to take any questions.

9 CHAIRMAN PERATA: Thank you.

10 First of all, let me commend you on your long and
11 consistent career with the Department. It's nice to see
12 somebody dedicated to public service and stays with what must be
13 one of the difficult, challenging areas that we have.

14 I want to talk just briefly, have you discuss a
15 few things.

16 We had the much ballyhooed AB 900. The question
17 is, what's the status of that now in terms of implementation?
18 Are you taking down those so-called bad beds?

19 MR. KERNAN: Yes, sir. AB 900, the many facets
20 of it, my responsibility addressed specifically the out-of-state
21 beds. And I'm happy to report that the Department's taking down
22 about 3,000 bad beds to date.

23 These are beds that are in gyms and day rooms
24 that were never constructed for housing. And that is the first
25 time in -- in my memory that we have we have actually been able
26 to take beds out of gyms and permit other programming activities
27 in there.

28 The other aspects of AB, 900 including the

1 additional capacity, in-fill program, is proceeding. There are
2 certainly barriers to its implementation, but we're moving
3 forward. The population reduction that we've seen to date has
4 been about 3,000 beds from the Spring 2007 projections, and
5 about 6,000 from the Fall. That's the out-of-state beds. The
6 parole programs that we're implementing have provided us much
7 needed space.

8 As you might remember in -- when we came before
9 you for AB 900, we were out of beds and would have to shut the
10 door. The counties -- the county systems and their overcrowded
11 conditions were at a crisis state. The space that AB 900 has
12 provided us, and the reforms that -- as we move forward will
13 provide us the ability to reduce the severely overcrowded prison
14 system.

15 CHAIRMAN PERATA: We touched briefly about the
16 visiting. I think you pointed out that you could be more
17 visitor friendly if you had some place to put people. And we've
18 heard you've commandeered those, so I just commend that to you
19 as a way. We like to talk about family reunification, and I
20 think the time that they spend together there has a lot to do
21 with how they are when they get out.

22 Rehabilitation, you don't have direct
23 responsibility for education or voc. ed?

24 MR. KERNAN: No, sir, other than that my staff,
25 my directorate, my wardens, are responsible to get the offender
26 to the classroom.

27 CHAIRMAN PERATA: How is that going?

28 MR. KERNAN: It's a significant challenge. With

1 an overcrowded population, with violence and gangs, there's
2 going to be situations that, for the safety of the prison and
3 its staff, that we must lock down the prisons.

4 I believe in the Secretary, and Undersecretary
5 Reynolds and I speak directly to the wardens on a regular basis
6 to try to address the lockdown situation. It's -- it's an art,
7 not a science. If we let out too -- if the wardens let out too
8 early and violence erupts, there's significant problems with
9 that. Our staff get hurt. If we keep it down too long, then
10 the inmates aren't getting to the program. So, it's a balance
11 that my wardens and my directorate make everyday in all of our
12 33 prisons.

13 CHAIRMAN PERATA: Is it true that we don't use
14 literate prisoners to help the illiterate learn to read?

15 MR. KERNAN: There's tutoring programs through --
16 throughout the state. I certainly believe that that could be
17 expanded, and that we could do a better job of using our
18 offenders that are in the prison systems.

19 You know, there's stories throughout the state of
20 very positive inmate tutoring programs, and college programs,
21 but that certainly could be expanded.

22 CHAIRMAN PERATA: Even at a nickle or a dime an
23 hour, if you get some people that can do that, it makes sense I
24 think to do it.

25 What's the status of our geriatric problem?

26 MR. KERNAN: Well, the receiver -- with the
27 receiver coming in, the medical care to our offenders, I'm happy
28 to report, is improving.

1 CHAIRMAN PERATA: What a coincidence.

2 MR. KERNAN: And it's certainly by volume.

3 The offenders that are over 50 years old, and I'm
4 not saying that that's geriatric at all, is --

5 [Laughter.]

6 CHAIRMAN PERATA: Good point. Your mom didn't
7 raise a fool.

8 [Laughter.]

9 MR. KERNAN: No, she didn't.

10 The older offenders in our Department, some
11 requiring medical care. There's certainly -- the receiver's
12 10,000 beds in AB 900 that will provide some more direct care
13 for them.

14 The Department's evaluating the re-purposing
15 [sic] of a DJJ facility at this point to perhaps cluster older
16 offenders. It's been my experience as a warden and in working
17 the prisons that those older offenders, the lifers, are the
18 stability that occurs in a prison. And they deserve to have an
19 environment that's free from the violence and incidents that
20 occur with some of the younger inmates.

21 CHAIRMAN PERATA: Any questions?

22 SENATOR CEDILLO: I just remain perpetually
23 concerned about this -- you mentioned the 60,000 hard working
24 men and women who are under your leadership and deserve a
25 constant common sense leadership -- in part because of my
26 background, but in part because of our duties and
27 responsibilities.

28 I remain perplexed at the failure of

1 administration and the collective bargaining agreement to reach
2 an agreement.

3 From your point of view, you come up right from
4 the rank and file. It's an extraordinary pathway to your
5 position today. But you must have a sense of the importance
6 bringing a certainty for the rank and file in terms of their
7 conditions, wages, conditions, terms of employment.

8 What does that do for your ability to lead when
9 you have the failure of that type of partnership that's manifest
10 in every collective bargaining agreement?

11 MR. KERNAN: Well, I would certainly like to see
12 the labor relations improve in this Department.

13 I know as a warden and at the line level, the
14 impact of what happens at the main negotiation table and up here
15 in Headquarters is somewhat irrelevant. They're in a war zone
16 down there, and they're focused on providing the safety to their
17 fellow staff and the offenders they're responsible for is
18 paramount.

19 I encourage our wardens to engage in positive
20 labor relations at the local level and believe that that's
21 happening in large part. But certainly, sir, I'd like to see
22 labor relations improve.

23 The ability for this Department, though, for
24 supervisors and managers to actually run the prisons free of
25 influence is an important factor, I believe. And so, I think
26 while it's been painful, these labor relations, it's something
27 that was necessary to get us into a place where our wardens can
28 make decisions without the influence, the political influence,

1 that sometimes occurred with labor relations.

2 SENATOR CEDILLO: I appreciate that you've got a
3 war zone. I think that's an accurate characterization there. I
4 think it would be appreciated by your staff to understand that
5 you have an appreciation for that work environment.

6 But I'm perplexed that we can't move forward to
7 resolve and improve these labor-management relations.

8 And I'm perplexed at how a warden is influenced
9 by politics? I'm just not appreciating that.

10 My sense is that the warden is the CEO of the
11 facility. They have duties and responsibilities. They have
12 power of position and title. They have an ability to execute
13 their directive and leadership.

14 I'm not appreciating how political influence,
15 particularly in that environment, should have any role to play
16 in their capacity to do their job?

17 MR. KERNAN: Well, I guess I would describe it,
18 sir, and maybe just going back to my experience of seeing other
19 wardens go up for confirmation when they were confirmed. It
20 placed the union in a position to support or not support a
21 particular warden, and that exerted some pressure on the wardens
22 to make decisions that they may not otherwise make.

23 The decision to stop wardens from being
24 confirmed, and the OIG involvement in the vetting process, I
25 think, is a very positive step to try and to distance the field
26 level staff from the politics of labor relations.

27 SENATOR CEDILLO: I trust what you're saying.
28 I'm just not appreciating how, in terms of being in a leadership

1 position, how that would you influence you?

2 It would seem to me that it would be a weakness,
3 if I may say, to be in a position where you're a head of
4 facility that's a war zone -- your characterization; I accept
5 that -- and to then be influenced by politics, to have your
6 decisions influenced by politics, it seems to me that maybe that
7 leader is not the person that we need in that position, because
8 it seems, given the kind of critical nature of the work that
9 takes place, high level of responsibility that you have and your
10 subordinate wardens, that those people would be independent of
11 politics, and should be.

12 MR. KERNAN: I would agree. And I believe that
13 now they largely are. I believe that before, and I believe the
14 question was related to the wardens previously before
15 confirmation.

16 I understand what you're saying. They are free
17 of it now. My wardens are working with the local chapter
18 presidents on any number of issues. And the current state of
19 the labor relations is evolving. Every day we work with our
20 chapter presidents to work through any number of issues.

21 As a warden, I actually looked to my chapter
22 presidents to ensure that -- my chapter presidents and their
23 members to help me resolve problems, bring up problems and
24 resolve them. So, at the field level, it was a very effective
25 tool. We worked hand-in-hand.

26 I think even up here today, as the situations
27 occur in the prison, that the communication between the union
28 has been positive in the operational side of events.

1 So, I work with CCPOA on a regular basis to
2 communicate and try to understand their concerns.

3 But I will say that we don't always agree. And
4 that's -- that is the way that labor relations are supposed to
5 work, in my opinion. It's a give-and-take.

6 SENATOR CEDILLO: I agree with you.

7 I note there's no opposition, so I trust that
8 it's worked sufficiently enough --

9 [Laughter.]

10 SENATOR CEDILLO: -- to accomplish that.

11 But I remain concerned, and I would hope that you
12 would share this concern, that there's not in existence today a
13 standing collective bargaining agreement, given the nature, the
14 unique nature, the unique dangers that the people who work for
15 you are under.

16 It seems that you would, in my experience in
17 this, that you would want to be a champion for your workforce,
18 given how critical it is, given the challenges that confront
19 you. And part of that would be that we would accomplish that
20 collective bargaining agreement with every unit that works for
21 you.

22 MR. KERNAN: If I can just say that
23 fundamentally, Secretary Tilton in assuming this position, made
24 it very clear to everybody, and I certainly endorse it, that we
25 are here to treat our staff fairly. There are employees and
26 there are members. Every decision that we make at the executive
27 level is trying to do the right thing by our employees and their
28 members.

1 SENATOR CEDILLO: Thank you.

2 CHAIRMAN PERATA: Just for fun, anybody here to
3 talk in opposition? Great.

4 Then those of you who are here to say you support
5 him, could merely just say you support him.

6 I know it's hopeless, but I try. He's in his
7 mother's arms, as it were.

8 MR. WARREN: David Warren on behalf of Taxpayers
9 for Improving Public Safety.

10 Excuse my interrupting, but since Saturday --

11 CHAIRMAN PERATA: You must have been crushed.

12 MR. WARREN: It was. Services on Saturday were
13 more difficult for the rabbi than it was for you.

14 When I first met Scott, the question that went
15 through my mind is, why would anybody be crazy enough to want a
16 job where the Members of the Legislature, the Governor, and the
17 Secretary told him what to do, the union and the victims
18 organizations told him how to do it, and people like myself told
19 him that he was wrong in the way he was doing it?

20 . [Laughter.]

21 MR. WARREN: So, I've come here today to bury
22 Scott Kernan, not to praise him.

23 [Laughter.]

24 MR. WARREN: But all kidding aside, my experience
25 with Mr. Kernan has been exemplary as, on behalf of the families
26 of inmates, when an issue has arisen, Scott's made himself
27 available. And on each and every occasion, has followed through
28 for the benefit of the family members of inmates, as well as

1 when there were certain desperate inmate issues, making sure
2 they were taken care of.

3 He has been -- the one lesson he has learned is
4 not to try to send me e-mails on Friday night through Saturday,
5 but I often get e-mails on Sunday and Monday nights as late as
6 11:00 o'clock. It never ceased to impress me that even though
7 I'm working as late as he is, he's still there at the office,
8 getting this information out.

9 He is an asset not only to the Department of
10 Corrections but the State of California. And after I say this,
11 if his head is narrow enough to get through the door, you should
12 confirm him.

13 By the way, Rabbi Book sends another message. He
14 says, "He better get confirmed." And I'll just leave it at
15 that.

16 CHAIRMAN PERATA: That's enough.

17 [Laughter.]

18 MR. WARREN: You have a good day.

19 MR. GIVENS: Mr. Chair, Members, Ron Givens here
20 on behalf of Associated Chaplains in California State Service.

21 I've got to tell you, things are kind of easy
22 when it comes to appointments here with the Department of
23 Corrections lately, because the Secretary has started a habit of
24 picking really good and qualified people.

25 There seems to be a sense that the Department is
26 not floating backwards downstream as fast as it was, that the
27 anchors are down, and things are headed -- starting to head in
28 the right direction.

1 That said, I've been asked by our President, Dave
2 Skaggs, to come and support Scott. And, you know, Scott is one
3 of those guys. He came to the Associated Chaplains' annual
4 training conference in October. There's a lot of other things
5 he could have been doing for that day, but he took time out to
6 come. He presented things in a factual and clear manner. They
7 weren't always the things that the chaplains wanted to hear, but
8 they were true.

9 Then he stayed until every single chaplain that
10 wanted to ask him a question, or approach him and talk to him
11 about an issue had had the opportunity to do so.

12 He's engaging. He's sincere, and most of all, he
13 understands the importance of the spiritual rehabilitative
14 process in getting people back on track that are part of the
15 Department. Without the spirit being habilitated, not assuming
16 habilitation was ever there -- I understand the name assumes
17 that rehabilitation is going to be part of it -- but he
18 understands that the spirit is vital to that process.

19 And as programs are becoming more and more
20 important in this leadership team at the Department of
21 Corrections, you couldn't have a better person for the job than
22 Scott Kernan. We urge you to support and -- no, we support. We
23 urge you to confirm. How's that?

24 CHAIRMAN PERATA: It's good. We can do that.
25 Thank you.

26 MR. TATUM: Good afternoon. My name is Richard
27 Tatum, spelled T-a-t-u-m. I'm the State President of the
28 California Correctional Supervisors Organization. Our

1 organization basically represents the supervisors and managers
2 in the Department of Corrections.

3 I won't belinger [sic] this a whole lot, but
4 Scott never fails, any time we contact him, to get back to us.
5 And like most people have said here already, that's any time of
6 day or night with it.

7 This man has honesty and integrity. And if we
8 had a whole big bunch more like Scott, this Department would be
9 much better off.

10 With that, we urge you to confirm him. Thank
11 you.

12 CHAIRMAN PERATA: Thank you.

13 MR. GRAY: Matt Gray on behalf of Taxpayers for
14 Improving Public Safety.

15 I've known Scott for about 15 years, almost 15
16 years. We've been on different sides of the aisle on many
17 times, but he's always treated me fairly, and he's always been a
18 man of his word.

19 I'm not a betting man, but if I was, I'd bet he's
20 getting out of here, so I'll keep it nice and quick. I hope you
21 support his confirmation.

22 Thank you.

23 CHAIRMAN PERATA: Thank you.

24 MR. BROWN: Mr. Chairperson, Members of the
25 Committee, my name is Chris Brown, Legislative Liaison for the
26 Association of Black Correctional Workers.

27 We are one of the employee organizations who has
28 brought concerns to Mr. Kernan's attention. And we believe that

1 Mr. Kernan has worked with us and sincerely dedicated his staff
2 and resources to help overcome the concerns.

3 So, our organization is in complete support of
4 the confirmation of Mr. Scott Kernan.

5 CHAIRMAN PERATA: Thank you.

6 Pleasure of the Committee?

7 SENATOR ASHBURN: Motion.

8 CHAIRMAN PERATA: We have a motion to approve.

9 First of all, I want to thank you for what you
10 do. I'm very impressed by the breadth of support that you have.
11 It speaks well not only for you but for the future of the
12 system, which most of us agree -- and it was so gently put --
13 we're no longer floating backwards down the river.

14 But I just want to emphasize that in your
15 capacity, anything and everything that can be done on the
16 rehabilitation front is extraordinarily important.

17 We have seen certainly where I represent, the
18 Oakland-Richmond corridor, we have seen instances now where the
19 culture of the prison is being exported to the streets. With
20 that being the case, it's not only dangerous where you work,
21 it's dangerous where they live. And you just can't, as you
22 know, come back into a community and turn it on and off like a
23 switch.

24 So, the rehabilitation, the literacy, the
25 familial relationships that are allowed to go on, if we've truly
26 come across that bridge where we're no longer just talking about
27 putting people in prison to punish them, but the idea that we
28 want to make sure that when they do come out, if they come out,

1 they come out better and not worse for having been there.

2 I always believe in leadership. I don't think we
3 get it often enough anywhere. A lot of people think we get what
4 we deserve, but I take that personally.

5 You are remarkable for what you've done, and for
6 your consistency in doing it.

7 And I'd just give you a little advice. You'd
8 maybe may want to think about your wife. She said something
9 about 11:00, midnight.

10 [Laughter.]

11 CHAIRMAN PERATA: I guess you've been married
12 awhile. It's probably working.

13 [Laughter.]

14 CHAIRMAN PERATA: But I know the toll that it
15 takes.

16 I've been very encouraged by what you've done,
17 your record, how you've comported yourself today, the kinds of
18 people that are here that I won't let testify.

19 So, congratulations for what is about to happen.
20 You just have to let us know when we're not doing enough to
21 support. If you don't have what you need to do the things that
22 I just said, then that's on us, if you tell us, and I hope that
23 you will.

24 MR. KERNAN: Thank you.

25 CHAIRMAN PERATA: We have a motion to approve.

26 SECRETARY WEBB: Cedillo.

27 SENATOR CEDILLO: Aye.

28 SECRETARY WEBB: Cedillo Aye. Dutton.

1 SENATOR DUTTON: Aye.

2 SECRETARY WEBB: Dutton Aye. Padilla.

3 SENATOR PADILLA: Aye.

4 SECRETARY WEBB: Padilla Aye. Ashburn.

5 SENATOR ASHBURN: Aye.

6 SECRETARY WEBB: Ashburn Aye. Perata.

7 CHAIRMAN PERATA: Aye.

8 SECRETARY WEBB: Perata Aye. Five to zero.

9 CHAIRMAN PERATA: Congratulations.

10 MR. KERNAN: Thank you.

11 [Thereupon this portion of the
12 Senate Rules Committee hearing
13 was terminated at approximately
14 2:35 P.M.]

15 --ooOoo--
16
17
18
19
20
21
22
23
24
25
26
27
28

1 CERTIFICATE OF SHORTHAND REPORTER

2

3 I, EVELYN J. MIZAK, a Shorthand Reporter of the State
4 of California, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing transcript of the Senate Rules Committee hearing was
7 reported verbatim in shorthand by me, Evelyn J. Mizak, and
8 thereafter transcribed into typewriting.

9 I further certify that I am not of counsel or
10 attorney for any of the parties to said hearing, nor in any way
11 interested in the outcome of said hearing.

12 IN WITNESS WHEREOF, I have hereunto set my hand this
13 6th day of March, 2008.

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28



EVELYN J. MIZAK
Shorthand Reporter

1
2
3 **APPENDIX**
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**State Fire Marshal Kate Dargan
Potential Issues/Questions for Confirmation
March 5th, 2007**

Statement of Goals:

- 1. Brief written statement of goals; accomplishments during tenure; how will success be measured?**

I have served two years in this administration as part of the Office of the State Fire Marshal (OSFM). I started as the Assistant State Fire Marshal in November 2005 just a few weeks before Chief Grijalva became the Acting Director (now Director) for CAL FIRE. In that capacity, I served in the primary leadership role for the OSFM. I was appointed to the State Fire Marshal position in March of 2007 and have served since that date as both the SFM and as a Chief Deputy for Cal Fire. My OSFM goals since my first day have been:

- *Represent a statewide leadership voice for fire prevention, planning, and mitigation to policy makers, the public, and the fire service.*
- *Complete the full implementation of the Wildland-Urban Interface Building Standards as part of the CA Building and Fire Code.*
- *Develop the next generation of Fire Hazard Severity Zone Maps and conceptually develop Fire Risk Maps to reflect actions taken to mitigate hazard and reduce risk. This is in support of the CAL FIRE ‘Fire Plan’.*
- *Bring strategic planning, funding, and fire service consensus to the State Fire Training Program, and provide a forward-focused plan for the next 20 years of fire service training.*
- *Adopt and implement the International Model Building and Fire Codes and develop the statewide amendments to keep CA basic fire and life safety provisions equal to or better than they were under previous codes.*
- *Work internally within CAL FIRE to organizationally restructure fire prevention and planning programs in order to emphasize their importance and focus resources on those priorities.*
- *Create pride, planning, and leadership within the Office of the State Fire Marshal so that those who follow my tenure will find a well-run, funded and responsive organization.*

Senate Rules Committee

FEB 20 2008

Appointment

I strongly feel that the success of my tenure as SFM will be judged on the actions I take on a number of important fronts, including:

Leadership Successes and Measurements: To date, I have conducted the annual development and publication of the Cal Fire/State Fire Marshal 2-Year Work Plan and Annual Report. Spoke at over 30 meetings, workshops, and conferences in 2007 about fire prevention, training, and SFM goals. I also meet constantly with stakeholders and promote vigilant consensus-based, inclusive decision-making.

Wildland-Urban Interface Building Standards (WUIBS) Successes and Measurements: Adoption of Chapter 7A in the CA Building Code. These are national leadership standards that are revolutionizing how we approach the wildfire-caused building loss problem and are being implemented throughout the state between January and July, 2008. We have developed local government guidance documents, industry testing standards, trained over 2,000 code and design officials in 2007 and proposed these standards be adopted nationally.

Fire Hazard Severity Zone Maps Successes and Measurements: To date, we have developed a significantly improved fire model to assess fire hazard, partnered with UC Berkeley and leading researchers to analyze structural influences in fire behavior and released the first revised maps in 20 years. Working with a few local government entities to develop guidance templates for fire risk maps that will show local mitigation efforts such as firesafe planning, zoning, building, defensible space, better fuels information, and vegetation management efforts as part of the measured risk.

State Fire Training Successes and Measurements: To date, we have created and approved the Blueprint 2020 State Fire Training Strategic Plan due to be signed by the State Board of Fire Services on Feb 20th. We also, with the input and consensus of the fire service, increased fees and used these funds to provide field liaison staff to both career and volunteer local fire departments. We have also added several fire departments (including San Francisco and Los Angeles) to the accredited SFT Training process. I have co-sponsored the California Joint Apprenticeship Committee and continue to strongly support additional recruitment efforts for women and minorities. Developed leading-edge programs for Alternative Fuels, Solar, Hydrogen, Electric) Vehicles. Placed the majority of the outdated core fire service training certification classes into curriculum updating.

Adoption of California's International Model Building and Fire Codes Successes and Measurements: Adopted a landmark and comprehensive set of state amendments with full consensus from fire and building officials, industry and state agencies. The OSFM has created a broad-based representative Disabled Access Advisory Committee that is developing future code recommendations. We developed training classes to support local government fire code officials. Lastly we are currently working in partnership with the CA fire service to streamline and update Title 19 and consolidate it with the Fire Code in 2009 to make regulations more transparent and easier to enforce.

CAL FIRE Internal Fire Prevention Successes and Measurements: I am working closely with Director of CAL FIRE to organizationally shift programs within CAL FIRE and Office of the State Fire Marshal to focus and emphasize prevention. This includes Fire Planning, Wildland Fire Prevention and Engineering, Fire and Resource Assessment Program, and Law Enforcement. This structure is still being evaluated for effectiveness and preliminary results are positive. Defensible space inspections are improving in quality and quantity, the merging of code, planning, prevention efforts are occurring at the field level, internal knowledge is increasing and relationships between local and state fire prevention staff are improving.

Internal OSFM Leadership Successes and Measurements: The OSFM is developing its 4th edition of the 2-Year Work Plan (2005-2008) and the 3rd edition of the Annual Report. We have identified all current limitations or systemic problems and have defined reasonable actions to address those issues.

2. Most serious issues facing the OSFM; actions currently taking to address them?

Answer: The most serious concerns are:

Succession Development – Recruitment and Retention of quality deputy state fire marshal, state fire training, and pipeline engineering staff is difficult at best and statewide lists are quickly exhausted. This is difficult for special-revenue programs since positions without personnel affect the projected revenues and negatively influence the budgets. We are attempting to address this by identifying the specific workload, responsibilities, obstacles and potential solutions for the affected classifications.

Firesafe Planning – Support and development of firesafe planning concepts for CAL FIRE and local government to help reduce the impact of conflagration fires. The OSFM, as part of CAL FIRE, is working to develop tools, ideas and methods that can be used by any entity to better plan for and mitigate wildland-urban interface fires.

Southern CA Fires, October 2007

3. The OSFM was involved in different aspects during the fire siege, including liaison with the military. As certain military aircraft were not available during the early stages of the wildfires and you stated the critical hours were lost transporting both military planes and information specialists from other states, including Colorado and Virginia.

What changes are necessary to military/fire-service agreements to avoid a delay in fighting future fires?

Answer: The article quoted in this question misrepresented my answer to a reporter's question. The gist of the article was that CAL FIRE deployed a significant number of remote-sensing and intelligence-gathering assets - many for the first time - during the fire siege. As we learned what and how to put these assets to work, my answer was that we had learned things that would allow us to deploy them even faster the next time we need that level of information. That said, there are ways to continue to improve this aspect of emergency data service.

- Develop joint training and specialization criteria for Situation Status Specialist within the CA Incident Command System.
 - Develop pre-deployment agreements for these types of assets (satellites, unmanned aerial vehicles, NASA, military intelligence platforms, and CA National Guard) that are similar to the fire-fighting agreements we have in place today.
 - Work closely within Firescope and with the federal firefighting agencies to coordinate the area priorities and needs before and during large-scale disaster deployments.
 - Look for opportunities to integrate this emerging technology with everyday initial attack firefighting so that we are being as absolutely effective with resource-tracking, fireline information and situational awareness as possible. This integration could merge our planning and mitigation actions such as defensible space inspections and fuels management with fire suppression actions and priorities.
4. The Governor established the Blue Ribbon Fire Commission in November 2003 in response to the 2003 Southern CA wildfires. In April 2004 the commission made several recommendations for improving emergency preparedness to prevent and respond to CA wildfires.

Of the recommendations that have to be implemented or completed, which remain as priorities to move forward?

Answer: Those contained in the 2008 Governor's Blue Ribbon Task Force Recommendations of the 2007 Fires. The ones specifically related to the Office of the State Fire Marshal include:

- Establish and implement standards to ensure that all responding fire personnel are trained, equipped, qualified and led to safely and effectively perform in the Wildland Urban Interface environment.
- Create and fund an on-going POST-style training program for the California fire service.
- Direct CAL FIRE to form a working group of stakeholders at all levels of government to develop a model strategy for pre-wildfire hazard reduction.

This strategic plan shall address:

- *Firesafe Land Use Planning Guidelines and Community Wildfire Protection Plans*
- *Firesafe/Firewise Council Funding*
- *Wildland Urban Interface Public Education programs and training recommendations for Wildland Urban Interface critical professions (planners, architects, landscape designers, builders, etc).*
- *Defensible Space training and enforcement recommendations*
- *Implementation guidelines and standards for integrated planning data and GIS across all jurisdictions to support Wildland Urban Interface mitigation and risk analysis.*

- *Wildland Urban Interface Model Building and Fire Codes*

- *Develop legislative and funding mechanisms to implement the recommendations of the Wildland Urban Interface Prevention and Planning Strategic Plan.*

- *Support partnerships with all key Wildland Urban Interface stakeholders including the insurance industry, firesafe councils, local, and state, government.*

Fire Engineering Division

5. The Fire Engineering Division administers licensing programs and performs engineering functions affecting consumer services and product evaluation, approval, and listing. The program requires staff with academic training in fire protection engineering and other disciplines, as well as technical expertise in laboratory testing procedures.

Are you re-evaluating any building materials or building standards in light of recent fires?

Answer: Learning from the fire storms in 1991, 1994, 2003, and 2007 the SFM has been working diligently in the past few years to develop the Wildland-Urban Interface regulations. These WUI regulations have been adopted into the 2007 California Building Code which became effective January 2008. Building materials for use in the WUI areas such as decking, sidings, and windows must now comply with the new tough test standards specified in Chapter 7A of the 2007 CBC, the first of their kind in the nation. We believe these efforts will pay off for the State of California in the form of lives and property saved, protection of our natural resources including our important watersheds and reduced greenhouse gas emissions.

Fire and Life Safety Division

6. Code compliance inspections and plan review of state-owned and state-occupied buildings and institutions, as well as detention facilities, high rises, schools, camps, places of assembly, hospitals, care facilities for children and the aged, as well as other types of occupancies, are under the jurisdiction of the State Fire Marshal.

As the infrastructure of state-owned buildings ages, do you believe the state faces particular challenges?

Answer: There are over 25,000 state owned and occupied buildings within the area of responsibility of the State Fire Marshal and the ages of those buildings range from just a few years to over 30 years old. The infrastructure of state-owned buildings continues to age and create specific fire and life safety challenges.

Recognized improvements to building safety include enhanced seismic design, better fire protection features (such as automatic fire protection sprinkler systems, fire alarms, and building material protection), and advanced technology in building design as it relates to life safety.

However, many existing state buildings are faced with limited maintenance of fire protection and life safety components. The reduced funding for continued maintenance results in many buildings not being maintained to their original construction requirements. The OSFM is responsible for inspecting these facilities on a recurring basis and the numbers can be challenging. The Governor's proposed budget recognizes and addresses the need for more positions to increase inspections of our State's aging buildings.

As buildings age and building uses expand and/or change, it is critical for the State of California to monitor the conditions of these aging buildings and provide the necessary avenues to ensure that the original fire and life safety protection is maintained or enhanced when necessary.

It is also important to ensure that green building standards do not conflict with the overall fire and life safety goals. The State Fire Marshal will continue to take a lead role in facilitating a fire safe and green California. Building technologies with alternative fuels, solar panels, ventilation systems, lightweight construction, more wood products, are good for our environment and need coordination with fire and building safety experts.

Flame-Retardant Chemicals, Fabrics, and Materials

7. The State Fire Marshal regulates flame-retardant chemicals, fabrics, and materials. Flame-retardant chemicals are subject to laboratory testing and must demonstrate their flame-retardant capabilities before the State Fire Marshal may approve the chemical fabric or material. The OSFM issues certificates of registration for approved flame-retardant chemicals, fabrics, and materials.

What considerations, if any, are made by the Office of the State Fire Marshal in terms of the environmental and human health effects in the approval of these flame-retardant products?

Answer: While the mandate for the Office of the State Fire Marshal is to promote fire, life and safety policies, it does recognize the concerns regarding the environmental and human health effects in the approval of flame retardant products and chemicals. We strictly enforce the law to ensure the safety of the public as well as the environment. AB 302 (Chapter 205, Statutes of 2003) prohibits a person from manufacturing, processing, or distributing a product, or a flame-retardant part of a product, containing more than 1/10 of 1% pentaBDE or octaBDE, by mass. During our approval process, we carefully examine the products/chemicals to ensure that the banned chemicals are not used.

As you know, fires are still the leading cause of death, injury and property damage in the state. With that in mind, the department has serious concerns banning the use of fire retardants in seating furniture, mattresses, box springs, futons, other bedding products, and reupholstered furniture to which filling materials are added without first ensuring the existence and availability of suitable alternative fire retardants that are effective.

Banning fire retardants prematurely or without replacement products could create a situation in which, due to the lack of availability of products and materials that slow the spread of fire, California could see an increase in the number, and intensity, of fires occurring in homes, hospitals, nursing care facilities, workplaces, public transportation and other motor vehicles.

Pipeline Safety

8. The Hazardous Liquid Pipeline Safety Act of 1981 authorizes the State Fire Marshal to exercise exclusive safety and enforcement authority over approximately 5,500 miles of intrastate hazardous liquid transportation pipelines. In addition, the State Fire Marshal acts as an agent for the federal Office of Pipeline Safety concerning the inspection of more than 2,000 miles of interstate pipelines. Pipelines must be pressure-tested every

five years and higher-risk pipelines every two years, with all results reviewed by your staff.

Please describe your office's review process for pipelines.

Answer: Our inspection process is described in CGC Section 51014.5 and includes:

- (a) *When hydrostatic testing is required by Section 51013.5, the test results shall be certified by an independent testing firm or person who is selected from a list, provided by the State Fire Marshal, of independent testing firms or persons approved annually by the State Fire Marshal.*
- (b) *The results of the tests required by Section 51013.5 shall be submitted by the independent testing firm or person within 30 days after completion of the test to the State Fire Marshal, who may review the results. The report shall show all of the following information:*
 - (1) *The date of the test.*
 - (2) *A description of the pipeline tested including a map of suitable scale showing the route of the pipeline.*
 - (3) *The results of the test.*
 - (4) *Any other test information that may be specifically requested by the State Fire Marshal.*

California is unique in the nation in that it is the only state that requires an outside independent party to witness and document the test results. There are approximately a dozen firms or individuals presently approved to witness each pressure test. These independent testing firms are experienced in pressure testing and are provided guidance documents and training courses to educate them on SFM expectations and requirements when witnessing and certifying tests.

Once a test result is received in our office, it is assigned to an engineer to review for adequacy, completeness and accuracy. Data from the test is entered into a database for the pipeline.

Provisions are also made for other testing methods under Section 51013.5(i)
(i) Test methods other than the hydrostatic tests required by subdivisions (b), (c), (d), and (e), including inspection by instrumented internal inspection devices, may be approved by the State Fire Marshal on an individual basis.

In lieu of pressure testing – waivers are routinely issued to allow the use of internal inspection devices (commonly referred to as smart pigs). This technology is considered superior to pressure testing and provides a clearer

indication of the condition of the pipeline. Corrosion cells, dents, manufacturing defects and other anomalies can be detected and repaired by the operator prior to failure. Approximately 75% of the pipeline mileage in CA is smart pigged. The other 25% of the pipelines were constructed prior to 1990 and were not designed to use this technology. All pipelines constructed since 1990 must be able to accommodate these internal inspection devices. The results of these smart pig inspections are reviewed by pipeline engineering staff during integrity management inspections.

The Hazardous Liquid Pipeline Safety Act of 1981 authorizes the State Fire Marshal to exercise exclusive safety and enforcement authority over approximately 5,500 miles of intrastate hazardous liquid transportation pipelines. In addition, the State Fire Marshal acts as an agent for the federal Office of Pipeline Safety concerning the inspection of more than 2,000 miles of interstate pipelines.

9. *What authority does the office have to shut down a pipeline you feels is a threat to public safety or the environment? How many pipelines has your office orders shut down in the last twelve months? In the past two years?*

(Excerpt from Health & Safety Code)

Section 13107.5. The State Fire Marshal may investigate every break, and shall investigate every explosion or fire, involving a pipeline reported by a local agency pursuant to Chapter 5.5 (commencing with Section 51010) of Division 1 of Title 5 of the Government Code. The State Fire Marshal may immediately order any pipeline closed when it is determined to be necessary to do so in the interests of public safety. The pipeline shall remain closed until it is determined that operations may be resumed with safety or until any discovered safety defect has been remedied or repaired. This section applies to intrastate pipelines only.

On interstate pipelines, we would notify the U.S. Department of Transportation, Pipeline and Hazardous Materials Administration and request that they issue a hazardous facility order to shut the pipeline down. We have not ordered any pipeline shut down in the past 24 months. The State Fire Marshal has never needed to use this provision. Pipeline companies fairly frequently shut down their pipelines as a result of some type of external event such as an earthquake, potential flooding, train derailments, loss of communication with remote transmitters, etc. Some operators are required to notify us of shutdowns as part of their operating procedures. These typically are done as precautionary measures. We haven't run across a situation that became a threat to public safety that wasn't already being addressed by the operator and monitored by SFM staff.

Training

10. The Office of the State Fire marshal provides training in fire prevention and fire suppression to local fire agencies. Additionally, training in arson and bomb investigation is provided to California fire departments and law enforcement agencies.

Please describe the fire training program. Who receives the services? What specifically would you do to improve fire training around the state?

Answer:

State Fire Training Background:

The OSFM's fire service training functions are a result of the transfer of the Fire Service Training and Education Program (FSTEP) from the Department of Education in 1974. Since that time, the OSFM's role has evolved from one in which State Fire Marshal staff worked directly with fire departments in the field— to one of coordination for the statewide delivery system, working with registered instructors in accredited community colleges and local fire department training centers statewide.

Today's State Fire Training Program supports the career development of approximately 68,000 fire service personnel in 987 fire departments statewide. In any given year two-thirds of this population participates in a State Fire Training class. In 2007, for example, 46,547 fire service personnel participated in 2,248 State Fire Training classes.

The purpose of the California Fire Service Training and Education Program, as established in the Health Safety Code (§13155-13159.4 [1977] and §13159.7-13159.10 [1988]), is intended to reduce the costs in suffering and property loss resulting from fire through standardized fire training and education programs. We accomplish this through the maintenance of the certification training standards (CTS), the development and management of certification curriculum and hands-on training programs, accreditation of local and regional training facilities, publishing certification training standards, instructor guides, student manuals, and related support materials, along with maintaining our partnership with our stakeholders; individuals, groups, organizations, and agencies involved in fire and rescue related training.

There are 27 levels of position certification available in the SFT Program from Fire Mechanic to Fire Chief. The certification classes are further enhanced with hands-on training such as auto extrication, confined space and trench rescue classes. These training programs are developed and delivered to volunteer and paid fire department personnel in all areas of the state.

Strategic Plan:

In July 2006, we developed “Blueprint 2020 - California State Fire Training Strategic Plan 2008”. The primary concern is succession planning and preparing a new generation of skilled professionals. Blueprint 2020 identifies the following key goals:

- *Higher levels of quality and accountability in all courses*
- *Improved accountability for instructors and training contractors*
- *Improvements in data management*
- *Continuously updating curriculum*
- *Continuing education*
- *Web based business processes*
- *Support for dedicated sources of funding and staffing*
- *Development of a fire-service training model that mirrors the POST law-enforcement model*

Areas of Improvement:

We have already begun to develop a quality improvement program by monitoring the delivery of our training programs with increased field personnel.

There are 20 curriculum projects underway including:

1. *Fire Investigation*
2. *Rescue*
3. *Fire Officer and Chief Officer*
4. *Fire Prevention*
5. *New code adoptions have resulted in building, fire, and wildland/urban interface code training*

Proactive training programs include:

1. *Emergency response to Photovoltaic Equipment*
2. *CARB grant for emergency response training to alternative fuel vehicles*

Employing web-based technologies:

1. *Posting business processes on-line*
2. *Safely and securely allow students and instructors access to their training records*
3. *Beta testing of web-based training and hybrid (web/classroom) training programs*

Capstone Testing- a comprehensive evaluation tool that can be applied after a candidate completes all their training and experience requirements and applies for a position certificate:

1. *Increased exam security*
2. *Professionalize the fire service education and training program*

California Public Safety Institute- create a unified system that integrates all public safety training and education incorporating the training functions of SFM, OES, POST, and OHS into a public safety campus.

Senate Confirmation
 Scott Kernan
 Chief Deputy Secretary, Adult Operations
 Responses to Senate Rules Committee Questions
 February 19, 2008

Senate Rules Committee

FEB 19 2008

Appointments

Statement of Goals

The chief deputy secretary of Adult Operations provides leadership, management, and oversight for the state's adult prison and parole systems. As part of the management team for the Department of Corrections and Rehabilitation, the chief deputy secretary also collaborates with all divisions responsible for programs such as education and juvenile justice.

The California Department of Corrections and Rehabilitation is responsible for incarcerating more than 170,000 adults in 33 institutions and 40 fire camps and other facilities, and 2,800 juveniles in 8 facilities and 2 camps. The department manages another 177,000 adult parolees and approximately 3,000 juvenile parolees. The stated mission of the department is to improve public safety through evidence-based crime prevention and recidivism-reduction strategies.

- 1. Please provide us with a brief statement of your goals as chief deputy secretary. What do you hope to accomplish during your tenure? How will you measure your success?***

My goal as Chief Deputy Secretary is to provide consistent, common sense, and responsible leadership to a massive and complex organization. The challenges of overcrowding, rehabilitative programming, fiscal management, court compliance and prison/parole operations offer an array of significant and challenging goals. However, my focus must be on operational effectiveness, the safety of offenders, staff, and the public, and leadership to approximately 60,000 employees and over 300,000 offenders and the countless other stakeholders involved in one of the largest prison systems in the world. Ensuring sound correctional policies that keep offenders secure and productive during their incarceration, and effectively supervised during parole and keeping my staff and the public safe, is my narrowly defined and primary goal.

I bring to this assignment 25 years of correctional experience in a variety of institutional and headquarters classifications. This varied experience provides a well balanced understanding of the diverse and complex facets of the Department. I do not profess to be an expert in all, or even a majority, of the wide spectrum of departmental missions. However, possessing a basic understanding of these missions coupled with the leadership capacity to rally the men and women of the Department to a common purpose and the character to inspire confidence to our employees, offenders, and related stakeholders has allowed me to over-achieve in my career goals and to contribute to organizational effectiveness.

February 19, 2008

Secretary Tilton has assembled a team of executive leaders from throughout state government to meet the challenges of this Department. Bright and experienced individuals with specific expertise in a variety of areas have joined CDCR. There is not a short-term focus on any one element nor is a particular discipline the primary or controlling decision-maker. Custodial operation is not the only consideration given priority as we address departmental challenges. I mention this to only illustrate a personal goal of mine to make this team stronger and welcome diversity in disciplines. The Secretary is changing this Department by challenging individual leaders to provide competent and accountable leadership and work together for a common goal in a complex and fast changing environment.

Success on any major scale requires our team to take on responsibility. That responsibility ranges from providing an environment that represents the best model for improving offender behavior and offender outcomes to providing a safe, clean, and productive prison environment for offenders and staff. I have no illusions that violence, gangs, narcotics and other contraband are direct threats to meeting our ultimate vision. If efforts to provide effective rehabilitative programs will be achieved, it will, at least in part, depend on our ability to implement effective measures to address these issues. I understand that I cannot accomplish this alone and to that end a primary goal of mine is to develop leadership within parole and prison operations that are responsible and work with the other elements of the Department to provide a safe and rehabilitative environment. I will hold these managers accountable to a larger philosophical goal of fair and equitable treatment of offenders and staff and demand productivity and teamwork.

I have outlined a summary of some of the major goals I hope to accomplish during my tenure. Leadership, commitment, responsibility, teamwork, consistency, production, common sense, prioritization, and competency are what I and this executive team stand for. The measures of my success are the successes of my subordinates, colleagues and superiors. Every day throughout this Department, both in prison and parole, staff are meeting the goals I have outlined. We are implementing rehabilitative programs and are creating safe environments within the prisons and on the streets. That is not to say that we don't have significant organizational challenges to overcome. I am proud to be a leader in this Organization and if confirmed will be proud to continue to place this Department as a national leader in corrections management.

February 19, 2008

Reorganization and Coordination of Responsibilities

On July 1, 2005, the Youth and Adult Correctional Agency was reorganized pursuant to Senate Bill 737 (Romero), Chapter 10, Statutes of 2005, into the Department of Corrections and Rehabilitation. The intention of the reorganization was to improve the effectiveness and efficiency of the departments and boards that made up the former Youth and Adult Correctional Agency. Secretary James Tilton told the Rules Committee he wanted the different divisions to work together to achieve consistent practices. The department hired an outside consultant to help formulate a formal, written delegation of authority. One of the concerns about the reorganization was that it would require all issues to be raised to the secretary and undersecretary for approval or resolution.

- 2. How do different divisions coordinate their roles in areas such as decision-making authority, accountability for actions, and evaluation of programs? Please indicate the extent to which you are involved in resolving disagreements that may arise and provide an example.**

In any large organization, and perhaps more heightened in our environment, is the need for collaboration between the various disciplines. The roles between program and operations are so inter-connected the collaboration of decision-making, accountability and evaluation of programs becomes central to organizational effectiveness. Not imposing a particular importance to either discipline above the other and our ability to work collaboratively becomes essential. In the past, there has been overarching emphasis on one or the other of the disciplines as the pendulum swung from one emphasis to the other. In this environment, keeping the pendulum balanced is one of my jobs. Program/rehabilitation is good custody and custody is good program/rehabilitation.

I believe that a strong contribution I make to the organization is the ability to listen to the variety of opinions, whatever the discipline, and discern the core problem and its solution. I require that Operations leadership understand the emphasis on program and the impact on good security operations. In this fashion, decision-making authority, accountability of actions, and evaluation of programs becomes a joint responsibility of the Organization. With this consensus, leadership does not alienate any discipline and our Organization continues to improve.

An example of this is the expansion of community-based programs in parole. The Division of Addiction and Recovery Services and the Division of Adult Parole Operations (DAPO) worked together to expand alternative sanction programs and exceeded court expectations in the Valdivia settlement. Questions regarding ultimate decision-making authority, program implementation, and efficiency of the individual programs have been debated between the two divisions. My colleague, Ms. Hood, Chief Deputy Secretary, Programs, and I continue to work together to resolve

these disputes. Not from a perspective of who has more authority in the organization, but from an even playing field that endeavors to reach the right conclusion for the Organization. Disputes that cannot be resolved are elevated to the Undersecretaries for resolution.

While there are many other examples of perplexing problems that cross division lines, the clear message is collaboration at all levels of the Organization. My colleagues and I are directly involved in resolving disagreements as they occur. Establishing governance structure that thoughtfully debates programs/solutions, only elevating problem/solutions where consensus cannot be reached, and perhaps, more importantly, the expectation that leaders work for the larger good of the Organization.

3. *Prior to the reorganization, adult custody was organized in three geographic regions. Since the Re-org, it is organized by mission such as reception, high security, women, etc. What is your evaluation of how effectively the current mission based system is working? Are mission based directors with wide ranging geographic responsibilities able to mentor wardens at distant sites to your satisfaction? What is your expectation for how much time the associate directors should spend at these institutions? What changes should be made, if any?*

Having worked as an Associate Director, Deputy Director, and Director of Division of Adult Institutions (DAI) in the newly reorganized mission based structure, I am familiar with both the strengths and weaknesses of this configuration. Managing similar prison missions offers some benefits of comparison and certainly assisted me in evaluating a variety of performance measures. However, even in similar missions, the individual prisons manage different populations and have unique issues. The Female and Reception Center (RC) missions are such unique operations that the mission based organization offers some real advantages. In my opinion, the reorganization to missions has greatly advanced the oversight and advancement of these specialized populations.

These advancements are not so apparent in the other three missions. Consistency is an essential quality of leadership that this department must maintain. To that end, the Secretary has permitted me to move resources and workload from the individual missions, allowing the unit to be more field focused, and providing for the development of the Program Support Unit for independent analytical review of operations such as resource requests, Post Assignment Schedules, Monthly Budget Plans, etc. This minor modification to the mission structure maintains necessary consistency to the field and enhanced oversight of prison operations by a separate unit not directly reporting to the mission Associate Directors. I believe this is working and executive leadership continues to evaluate the efficiency of this process.

Undeniably, the geographical separation of the missions provides challenges to effective oversight. Locating the Associate Directors in the field, while logically and

February 19, 2008

fiscally challenging, may be something the Department will have to evaluate in the future. In the meantime, the emphasis on hiring quality leaders into the positions and setting clear focus on institutional operations is the primary goal. The workload demands on all headquarters staff, including the Associate Directors, precludes setting a hard expectation of time in the field. However, it is my expectation the Associate Director's spend "the time necessary" to manage field operations and provide quality guidance and oversight to the Wardens within their missions under their supervision.

I will continue to evaluate efficiencies through systemic audits, statistical analysis and personal visits, by myself and the executive team, to determine Associate Director oversight efficiencies. However, I believe at this time that no additional changes are necessary.

4. *Recently the department added two undersecretary positions—for programs and for administration, including support services such as research and facility planning. Because almost every operational decision has an administrative component, how do managers know where to go for decisions or approval? For example, what steps will a prison warden have to take to implement a new self-help program, establish additional correctional officer positions, or reallocate unspent funds within their own budget?*

The addition of the Undersecretary positions for Program and Administration has added necessary importance to these essential organizational components. These positions provide executive level leadership and in many respects have added clarity and focus to these key areas. The sheer workload in an organization of this size results in minimized attention to all aspects of organizational effectiveness. These positions, and the talented individuals who now occupy the assignments, ensure such areas as Budgets, Research, Contracts, and Programs are discussed in the context of every executive level decision reached.

I think this revised structure has changed little for the individual managers in the field and headquarters level who seek an executive level decision or approval. The structured chain of command has not changed. A warden may implement inmate leisure time activity groups, inclusive of "self-help" programs with frequency and number of groups determined by the needs of the population and fiscal/operational limitations. A warden would still use the traditional chain-of-command and processes to request additional resources, including correctional officers, for a specific reason. Such a request would require approval of the Directorate, Office of Budget Management, executive leadership, control agency approval and ultimately legislative approval. A warden retains authority, within specific line-item budget allocations, to expend allotted resources. Limitation on spending between line items is controlled for good reason and oversight of the organizational fiscal picture remains the responsibility of executive leadership. The Chief Deputy Secretaries are the essential leadership

positions to ensure timely and quality decisions are reached that fully consider all organizational considerations and resolve inevitable disputes when they arise.

I understand that there is periodic confusion and questions of authority and responsibility. These are necessary evils in a complex organization with many moving parts. Each day this executive team works efficiently on any number of important issues. If issues are appropriately raised through the existing chains of command the crossing of divisional lines are typically worked out and I would assert in much better collaborative fashion than was realized in the traditional structure. That is not to say that we don't have room for improvement, but to suggest that Operations, Program, and Administration all have equal standing in executive leadership structure and their independent chains-of-command are expected to work together to resolve problems.

5. *Who creates new in-prison programs, the warden or the programs undersecretary? Who creates new parole programs?*

New programs and the evaluation, efficacy, and continuation of existing programs, are the responsibility of Kathy Jett, Undersecretary, Programs. There is obvious overlap with the Operations and Administration arms of the Organization. Undersecretary Jett and her staff are currently evaluating in-prison and community programs throughout the system. This is not a small undertaking. During this evaluation period some programs remain under Operations authority; however, transition planning is underway. One example is the In-custody Drug Treatment Program (ICDTP). This program is essential for court compliance in the Valdivia settlement and an invaluable asset in diverting parolees to program instead of incarceration. The ICDTP was created and is operated by DAPO; however, organizational oversight is being transitioned to Adult Programs.

Adult Programs manages academic, vocational, substance abuse and other in-prison programs. Their development and ensuring they are evidence-based and consistent with departmental program strategies clearly rests with the Undersecretary of Programs. The operational oversight of the programs within the institutions is the responsibility of the Warden. As such, the Warden and his/her staff are directly involved in the program creation.

The same organizational strategy will be employed in the DAPO; however, transition is still occurring. DAPO created, funded and operated a number of essential parolee programs before the elevation of an Adult Programs within the organizational structure. These programs are operated within jails and in community settings and have both internal and external stakeholders. There is some natural painful separation that accompanies organizational change when moving programs under different leadership after staff have invested in the programs' success. Organizationally, the creation of executive leadership focused on programs and new ways of thinking about program delivery is a priority for this Department. Courage within the Organization to transition

February 19, 2008

and trust delegation of the programs is challenging; particularly when the effectiveness of the programs is critical to operational success. However, that trust is necessary for the cultural change mandated by the Administration and expected by the Legislature and the public.

6. *One of the stated goals of the reorganization was to achieve consistency over policies and practices in a broad variety of areas, such as custody, including the amount of time inmates are allowed on exercise yards, visiting, etc. In what areas do you believe there should be consistency? How do you monitor and evaluate this for both custody and parole decisions?*

Consistency, as a stated goal of the reorganization, is the nearly unattainable vision. Laudable as the vision is, there will continue to be wide variations in interpretation of the complex and immense organizational realities that is prisons, parole and the over 300,000 people that live and work in them. The Organization's efforts to provide clear and unambiguous policy can only hope to mitigate inconsistency.

As an example, the department has clearly defined visiting policy as it relates to allowable clothing for visitors. My interaction over the years with visiting counsels, as both a Warden and in my executive leadership capacity, has continued to raise examples where individual interpretation of "olive green" and therefore what does disallowable really mean, when the visitor's interpretation is that the garment is "turquoise." I will continue to ensure that Wardens and their staff understand the common sense importance of visiting as both a rehabilitative and smart custodial program that makes prisons safer. This focus ensures that the culture understands the expectation from leadership and is a means to fight inconsistency.

The administrative discharge of a parolee by operation of law is mandated unless parole staff take an action to refer the case to the Board of Parole Hearings. This process was delegated to line agents and their supervisors. Inconsistent application of this process was realized in both geographical and individual interpretation of what constituted "public safety." For example, a parolee who had a dirty drug test in Los Angeles may have been retained on parole, while a parolee, under similar circumstances in Oakland may have been discharged from parole. In an effort to increase consistency in the decision-making process, and in lieu of a system-wide decision making matrix currently being undertaken, the decision to elevate the discharge decision to the District Administrator level was ordered. The effort to provide consistency in this area has been challenged by some. I think this offers a good example of the Department's understanding that consistency, like this question suggests, is a goal of the Organization.

I monitor consistency throughout the Organization in a variety of ways. Statistical analysis via Compstat, daily/weekly/monthly reports, interaction with all levels of staff,

February 19, 2008

legislative interaction, public discussion, internal affairs reports and often the media offer opportunity to evaluate consistent application of policy. Consistency as a vision is important and nearly unattainable. It drives me as a leader to apply common sense and develop unambiguous policy for the field. It drives me to engage staff throughout the Organization and in my mind is the nucleus for every policy, rule, or practice we have. It will continue to be the target for me if confirmed in this assignment.

Monitoring Progress

For some years the department has sought to develop information technology systems, as well as standardized performance measures that could be applied throughout its 33 prisons. Likewise, the department has sought to measure actual practice against the stated policy. And it has held regular staff meetings using computer-assisted statistics to compare parts of its operations in a process known as Compstat.

- 7. What benchmarks do you review on a regular basis to determine whether individual adult facilities and parole offices are operating safely and promoting the department's mission? What red flags do you look for as part of your routine?**

The delegation of responsibility for overall operations is a delicate balance of oversight, monitoring, listening, proactive response and, perhaps most important, effective communication. The sheer volume of oversight measures is beyond an individual's capacity to effectively evaluate all aspects of operations. In my previous position as DAI Director, I closely monitored audits, Monthly Budget Plans, Compstat, Daily Reports, Population, Program Participation, etc. These measures and many more not mentioned, provided me a global perspective of operations and raised "red flags" that permitted proactive response. As the Director, it was my expectation that the Associate Directors closely evaluated individual prison performances and I trusted them to raise deeper problems to my level when appropriate. My superiors in this assignment trusted me to elevate problems to them before they became a crisis. This trust is the delicate balance mentioned above that often leads to internal and external vulnerability. Therefore, communication with the executive leadership team takes on increased importance.

In my current assignment, the delegation of evaluating operational effectiveness rests with the Directors, DAI and DAPO. I depend on the Directors to evaluate the multitude of important measurements and communicate to me systemic problems so that from a policy level, problems/issues can be evaluated and remedies proactively implemented. From this perspective, communication up and down the chain-of-command becomes critical. This is not complete delegation or absolving of my responsibility to know what is reality in these massive organizations; it is an admission that individual executive leadership is dependent upon effective communication at all levels. In addition, I review a number of communications to keep abreast of issues within Adult Operations,

February 19, 2008

including, but not limited to, reports of unusual occurrences; internal and external audits; court compliance; weekly population; Week Ahead Reports; Compstat statistics; as well as, regular meetings with my directors, cabinet, governance committees, members of the Office of the Inspector General (OIG) and Mr. Hagar.

8. *In addition to on-site visits, how do you ensure that the practices at prisons match the stated policies? How often are you able to visit prisons and parole offices?*

Throughout my career, and especially as a Warden at two institutions, I ensured departmental policies were being adhered to by listening. Listening as a leadership skill is underrated. A lot of voices are clamoring for a leader's attention and the ability to get people to tell you what you need to know versus what they think you want to hear is essential for organizational success. As a Warden, listening was not restricted to managers or supervisors it was applied to staff at all levels, inmates, families, community representatives and others. Through that communication, I could identify problems that would be proactively addressed, as well as appropriate application of policy that I could recognize and reward. Addressing deficiencies with reasonable firm and fair corrective action and wide communication of positive achievements set a cultural expectation of policy compliance. I apply these principles in my current assignment and believe that such practices permit me to monitor departmental policy application effectively.

During regular Wardens' meetings, I typically schedule time with just the Wardens to discuss policy level subjects. We discuss issues such as gangs, population, budget, visiting, lockdowns, etc. Through these meetings, I pay particular attention to the dialog – instead of speaking at them. It is my belief that, in my leadership position, such two-way communication is a valuable barometer to ensure policy is being applied effectively.

During the reorganization, resources were reduced from the Audit and Compliance Unit responsible for field evaluations. Secretary Tilton has renewed efforts into this Unit and made abundantly clear his expectation that all Divisions participate in this critical oversight function. The re-establishment of Peer Review audits has begun in which staff from headquarters, the field and Audits and Compliance evaluate all aspects of prison operations. I think a significant change in focus in these audits is the fundamental expectation that the intent is to identify problems and correct them versus the previous emphasis on finding problems and laying blame. That same cultural nuance is being realized with external audits from the OIG. I meet with the Inspector General monthly and discuss his office's reviews of both individual leaders in the organization and operational audits. Compstat, appeals, public communications, court compliance reports, union meetings, community meetings and other methods, noted in the previous response, provide a basis of information to which I can gauge policy compliance at an individual location or by an individual and take appropriate action, if necessary.

The demands of my position certainly inhibit field visits to the extent that I would like. This is not out of preference, but necessity. I try to balance the demands personally to the extent possible. I have tried monthly to visit field locations at prisons and parole offices. I also take advantage of group meetings by conducting public speaking engagements where possible. It is never enough. However, I feel that my expectation to conduct field visits, as necessary, to my Directors, Deputy Directors, Parole Administrators and Associate Directors has provided a constant and healthy presence of our Administration to the field. The Secretary and other members of the Cabinet equally conduct field visits. The challenges of time are immense, but I continue in my efforts to manage and look for opportunities to visit, and listen, to my staff.

9. *How do you ensure that the department's 64,000 employees are informed about the department's policy changes? How do you determine if training is needed to implement a specific change?*

Departmental employees are informed of policy changes through the use of departmental memorandums, Department rule change announcements, and Notice of Change to Department Operations Manual (DOM) via printed material and electronic mail delivery. Administrators, managers and supervisors ensure the policy changes are announced to their respective subordinates through distribution of the document, a memorandum and/or discussion in unit meetings/trainings.

Once the Department identifies the need to make changes to a policy, a policy change is drafted and reviewed prior to implementation. The review process ensures the policy is operationally sound, fiscally responsible, and operates within the scope of the law and/or applicable regulations. Operations and training staff identify any training components that may be needed as a result of the change, and a training plan is established in conjunction with the release of the policy.

Admittedly, communication to 64,000 staff, over 300,000 inmates and parolees, and countless stakeholders from border to border is a difficult and daily challenge. As mentioned in the previous response, I speak at a variety of public events to staff, stakeholders, and the public on departmental matters. I make field visits, attend departmental conferences and training sessions, and respond to extensive electronic communications everyday. I communicate in a variety of written forms that include memorandums, directives, regulations, and correspondence communiqués. I meet with labor organizations in scheduled meetings and as needed, and typically document discussions in formal minutes. I meet with community groups, vendors, and other state departments on a variety of topics to convey departmental positions. Through these communication methods, I attempt be a face and voice of common sense leadership for this Department.

Through oral and written communication to executive staff, I endeavor to provide clear direction to staff. I depend on my executive team to disseminate this message

February 19, 2008

throughout the Organization. I hope that my communication style, both written and oral, is articulate and easily understood. I monitor my progress in communication by listening to staff, inmates, and the public to ensure the message is unambiguously understood.

Effective training to staff on a variety of complex and challenging policies of the Department is the backbone of successful implementation. Compstat, Peer Audits, External Audits, Appeals, legislative contacts, and other means are ways to determine if training is resonating with staff at the field level. With limited time and money to train staff on increasingly complex issues impacting the department, more emphasis on line supervisory staff responsibility for training is mandated. Leadership and Ethical Decision Making training is enhancing these supervisory staff's ability to raise the training level to all staff. While continued improvement is necessary, I believe that great improvement is being realized throughout the organization.

10. *The department received \$52.8 million last year for recidivism reduction efforts and is receiving \$146 million in the current budget for similar types of efforts, including additional days of visiting. What role do you play in evaluating progress?*

The Reducing Recidivism allocation is managed by the Undersecretary and Chief Deputy Secretary, Programs. Many of the programs funded through these resources are directly related to Operations, such as the 3rd Day Visiting. As such, I have a direct role and accountability for the successful implementation of these strategies.

The Department has used the Executive Summary Report (ESR) project management process to evaluate progress and hold responsible managers accountable for specific performance deliverables. It is through this project management process that I monitor implementation, identify problems, and provide decisions to staff to advance the strategies. One example of how effectively this process works in providing oversight is in the area of 3rd Day Visiting. The Family Services Coordinators (Clinical Social Workers) provided for the 3rd Day Visiting Project and Chowchilla Family Express were not included in recent salary increases for the same classification working in the *Coleman Class Action Settlement*. This discrepancy limited the Department's ability to retain Clinical Social Workers for the 3rd Day Visiting Project. By identifying this impediment in our progress, the Department was able to submit a request for the Department of Personnel Administration to initiate union negotiations and provide the necessary parity in compensation. This compensation parity will permit the Department to move forward on implementation of this particular Reducing Recidivism strategy.

The primary responsibility for these resources lies with the Program side of the house, in that, increased academic and vocational programs ultimately must be approved and funded by my counterparts, Chief Deputy Secretary Hood and Undersecretary Jett. However, physically establishing the programs rests with the Wardens/Parole Administrators and getting the inmates/parolees to these programs timely and

consistently rests with institution and parole staff. Jointly, all sides of the house bare responsibility for the establishment and operation of these existing and expanding inmate programs.

Common sense and commitment in the implementation of these resources is how I would define my role. Problem-solving, engagement with Wardens/Parole Administrators, and their supervisors, regarding program implementation, and interaction with Program representatives to ensure timely and fiscally responsible implementation is my charge. Tracking of these program implementations, on the Operations side, is shared with DAI/DAPO supervisory and management level staff throughout the Divisions. They are expected to work with Program staff for the common good of the Department.

11. *What is the status of the Compstat process? Is it still being used to monitor progress? Please explain the reasons for any changes.*

The Compstat process has been partially suspended and is being re-tooled to be less work intensive for the field and to better define measurements, over a longer period of time. This will permit enhanced information for management oversight. The common sense logic of the Compstat process provided a statistical analysis of key indicators. This allowed executive management to identify problems, and maybe more importantly solutions, which ultimately held field-level and executive management staff accountable.

The Secretary moved the Compstat process to the office Audits and Compliance, from its prior organizational placement as a stand-alone office within Administrative Services, to better align statistical reviews with key audit areas. The office of Audits and Compliance surveyed executive management, as well as, field and headquarters staff directly involved in the Compstat process, to determine what efficiencies were needed. Less reliance on field data collection, more reliance on existing databases, comparative analysis of three years of data instead of quarterly comparison, and prioritization of key measurement indicators were identified in the survey. In addition, while reviewing the process, it was found institutions would interpret counting rules differently leading to incorrect data.

Under the new Compstat process, the data is obtained, for the most part, from an automated system and counting is not subject to interpretation. For example, instead of asking each institution how much they paid for correctional officer overtime, the information is obtained directly from the State Controller's Office automated pay system. This same process is used for use of sick leave, etc. There will be greater accuracy, less work for the institutions in collecting data, more data (3 years worth or more), and more information and time to analyze the data and trends to determine if there is a problem and to find possible solutions. With increased data, it is also easier to measure progress.

February 19, 2008

The revised Compstat process will be completed by March 1, 2008, and operational reviews are scheduled to begin later that month.

During the interim period, data collection continued. Notably, while it was not formally required, Associate Directors and their staff continued to use the information to measure operational effectiveness. This is a testament to the value of the process for management evaluation. Everybody involved in the process understands the fundamental effectiveness of the analysis and the process has been culturally embedded into the Organization. I believe it raises consciousness to problems that perhaps would not otherwise be identified and fuels professional competitiveness that advances organizational success.

Comparing key indicators from prison to prison within missions or parole region to parole region is invaluable as a management tool. Through this process, I can identify a prison that for example, had disproportionate disciplinary reports or unbalanced fiscal expenditures compared to other like institutions. In addition, I can identify program participation between Parole Regions. Through the Compstat process, we are able to focus institutional and headquarters resources to the resolution of the problem.

The Department remains committed to this process, and I individually believe the improved Compstat process will provide a more effective and efficient organizational statistical barometer of field operations and accountability of staff and myself.

12. *CDCR has two training programs known as Ethical Decision Making Model and Leadership Development Program. How do you follow up to determine whether employees who received the training are using it effectively? How many employees have you trained approximately?*

I have applied the concepts of both the Ethical Decision Making Model and Leadership Development Program in my personal career development. These trainings provide thoughtful and tested leadership practices, developed from national experts, and delivered in a manner that is applicable to the correctional setting. I participated as a student and as a speaker at several of the Leadership Development Program classes. The interaction with educators and executives in other professions was instructive and applicable to the challenges I face daily in my current position. Lesson themes on communication, change, cultural awareness, risk-taking, and problem-solving, to name a few, all invoke daily challenges to leaders throughout the Organization. These programs also have the intrinsic value of stretching individual skill sets and enhancing the readiness of individuals to greater responsibility in the Department while also permitting input of fellow staff and subordinates to critically critique the participant.

About 560 staff have attended the Leadership Development Program and approximately 320 of these are from the DAI and the DAPO. Over 8,000 staff have participated in the

Ethical Decision Making Model system-wide. Ken Hurdle, Chief Ombudsman, has dedicated significant time and resources to ensure that this training has been immersed into the Department. Ethical Decision Making training is conducted to all new academy classes, new employee orientation, and to other employees upon request. In April, the Ombudsman's Office will begin conducting this training in all prisons, contract facilities, juvenile facilities and parole regions. It is their goal to complete training in all these locations within the year. I will ensure all staff understand my support for these programs and expectation of wide employee participation. Mr. Hurdle's personal commitment to these critical leadership development programs is directly related to the successful implementation system-wide.

While assigned as the Warden, California State Prison – Sacramento, I used the ethical decision making process in a contextual fashion for many complex decisions. Thinking Ahead, Clarifying Goals, Gathering Facts, Considering Consequences, Determining Ethical and Moral Issues, Determining Fiscal Impacts, and Deciding - is a leadership thought-process that is applied to virtually all decisions. With the assistance of the Ombudsman's Office, I took this process from contextual to practice and used it as a format for articulating a particularly difficult decision to headquarters. The process allowed me to communicate these sound principles of decision-making in a thorough manner and I believe evidenced the practicability of this leadership training.

As a Warden, I met with all staff returning from both leadership courses. We discussed the impact on the individual, the applicability to the worksite, and the course of action necessary for the manager/supervisor to apply what he/she learned. In recent discussions with the Wardens at their bi-monthly meeting, I verified that they too are conducting these interviews. In addition, a questionnaire was developed to survey whether the Wardens were effectively applying the lessons they learned in these trainings. It was exciting to read the ways in which the training had made an impact on these leaders and subsequently on their staff and institutions. Wardens shared that they used the ethical decision making process in the following ways: managing a difficult situation related to gang issues; handling staff disciplinary matters; resolving communication problems between medical and institution staff; improving policies and procedures for aging inmates; managing a major mission change; and making thoughtful decisions in every day matters.

In addition, these leaders shared accomplishments they achieved when returning to their institutions with a focus on utilizing skills they learned through the Leadership Development Program. These accomplishments included: implementing a "Pups on Parole" program in partnership with the Humane Society to increase dog adoptions; managing a "dorm renovation" maintenance project without extra funding; development of better communication systems with institution staff, such as holding town hall meetings and structured supervisor/manager meetings to work through impacts of policy changes; challenging their subordinates to be better managers; and mentoring

February 19, 2008

staff to become future leaders through increased training, out of class assignments, cross training, and encouraging promotions.

The Department is recognizing the benefit of these programs through improvement of the staff who attend, as well as those they impact.

Assembly Bill 900

On April 26, 2007, the Legislature approved AB 900 (Solorio and Aghazarian), the Public Safety and Offender Rehabilitation Services Act of 2007, Chapter 7, Statutes of 2007. This act initially was intended to finance construction of space for 16,000 state inmates and create a broad range of performance measures that the department must meet. It will also expand a number of existing programs under your jurisdiction.

13. What role do you play in monitoring implementation of AB 900?

In 2006, I was placed on special assignment to construct a bed plan to address population projections that predicted CDCR would be out of all available capacity by summer 2007. This small work-group recommended, due to the dire circumstances, the fast-tracked expansion of capacity at several prisons. It also recommended the contract of additional capacity at out of state facilities. Ultimately, this plan evolved into a comprehensive expansion of bed capacity and innovative reforms never contemplated in CDCR history.

The unprecedented passage of Assembly Bill (AB) 900 resulted in additional resources and refinement of the proposal. Infill beds and the mitigation of aged infrastructure, with the assistance of the Governor-appointed strike team, have modified the proposal based upon further analysis of specific prison capacity. The Chief Deputy Secretary, Facilities Management Division (FMD), Deborah Hysen, is primary lead on this monumental expansion. The involvement of operations experts will be critical as both Infill and the Medical/Mental Health bed proposals are advanced. My role is consultative at the early stage of site identification, funding, and external approval of the projects. I anticipate a greater role as the projects progress to include staffing development and security considerations.

I have a much more direct involvement in the creation and daily operation of the California Out of State Facilities (COCF). CDCR built a resource infrastructure that permitted the contracting, monitoring and implementation of critical bed capacity in out of state facilities at a time when CDCR was nearly out of capacity. I was assistive in negotiating nearly 8,000 beds, scheduled for activation by July 2009, which included operations, programs, Receiver (Medical/Mental Health Services), fiscal considerations, transportation and, unlike many states that contract private beds, an extensive monitoring component that will ensure private vendors comply with California prison

standards. CDCR is on schedule and to date has transferred over 2,500 inmates to COCF facilities. The activation of the COCF program has been a major contributing factor to the CDCR's ability to deactivate over 2,700 non-traditional beds (beds in locations never intended for inmate housing) between September 2007 and January 2008. I believe that the provisions of AB 900, as it relates to the COCF program, has directly contributed to public safety by increasing capacity at a time that California prisons were at their absolute zenith. Without COCF, the Department may have had to close its doors and adversely impact already overcrowded jails.

Parole reform was always contemplated as a significant factor in population management and the precepts of AB 900. It is my personal opinion that parole reform can be instituted in a thoughtful and scientific fashion and have a critical impact on California's prison population. Similar impact has been realized throughout the nation. Parole decisions, in the absence of policy, are made by the individual sensibilities of line level staff. These professionals make public safety decisions everyday based upon their correctional experience. These decisions take on scrutiny when evaluation throughout the system bares inevitable inconsistencies. I have been assistive in crafting policy decisions intended to provide direction to the field on discharge decisions intended for enhanced consistency. In addition, I have been directly involved in the implementation of an "earned discharge" pilot intended to apply a risk and needs assessment to parolees and discharge those meeting reasonable risk so that parole resources could be focused on parolees with medium and high risk to re-offend. I have been providing oversight to external contractors creating a decision-making matrix for parole violations intended to provide increased consistency in violation decisions. I am convinced that better decisions regarding parolee discharges, application of a risk and needs assessment that focuses resources on those most likely to recidivate, and more consistent decisions, backed by policy, regarding violations will result in better public safety, more efficient parole operations, and reduced population in the prisons.

My duties relative to AB 900 also include involvement in the Department's efforts to create reentry facilities. I oversee the group that is tasked with taking this logical and emerging concept to reality. Emersion of rehabilitative programs and contact with local authorities and family in the location the parolee resides a year or so before the inmate's release, is the general and common sense precept of reentry. I am coordinating the departmental efforts of educating and advancing community participation in reentry facilities. With my colleagues, Chief Deputy Secretary Hysen, who will oversee construction of the facilities and Chief Deputy Secretary Hood, who will provide the inmate and parolee programming, we are working collaboratively to implement this primary concept of AB 900. The Tri-County re-purposing of the former Northern California Women's Facility into the first CDCR operated reentry facility is proceeding with preliminary plans while discussions with other interested counties are advanced.

February 19, 2008

While I have spoken generally about my role in AB 900 implementation, the departmental coordination of its implementation is extensive and impacts all organizational leaders. Critical milestones necessary to advance beyond Phase I requires coordination with every departmental asset. I believe that I have provided organizational leadership in the development stages, but understand that for the Department to succeed focused attention on implementation of this landmark legislation is required.

- 14. *Is it your understanding that the Governor's 2008-9 budget proposes moving \$2.5 billion previously allocated to infill, re-entry and medical needs to the Receiver for his use in meeting medical needs? If so, what direction have you received on how many beds you can expect and where they will be located?***

The Governor's Budget does propose to redirect \$2.5 billion from AB 900 authorized lease revenue bonds from Infill and Reentry projects to the Receiver for use in building health care facilities.

During AB 900 development, the Receiver had not presented formal plans to construct space to meet the health care needs of the inmate population. Without the information, \$1 billion was set aside in AB 900 as a placeholder for the construction of medical beds. It was clear that the "set aside" would be insufficient to address all the Receiver's needs and additional authority would be required as health care projects became clearly defined.

The Receiver's projects have now been defined, and the Governor's Budget proposes to move \$2.5 billion from AB 900 for use in building medical beds. Instead of seeking additional lease revenue authority for the Receiver's projects, and increasing debt obligation, Phase II funding was shifted to the Receiver.

The Department has several milestones to meet before moving forward with Phase II. The Administration is not abandoning plans for Phase II construction for Infill and Reentry, instead when ready to move forward with Phase II, CDCR will seek additional authority for these projects to replace the funding transferred to the Receiver's projects.

The specific Infill and Reentry projects in Phase I or II will not be impacted by the debt mitigation noted above. The specific projects may be modified as further evaluation of space, infrastructure capacities, construction costs, and other considerations are more technically analyzed by staff from our Facilities Management Division (FMD). Appropriate notification to the Legislature and public will be initiated when these projects are further defined and in the case of Reentry, when competitive procurement processes are completed.

15. *The department is now assessing new inmates as they arrive at prison reception centers. It is using a screening tool known as Compas (Correctional Offender Management Profiling for Alternative Sanctions) to determine the needs of an inmate, such as whether he or she needs a particular education or treatment program. At what point will this assessment be integrated into the inmate classification system that determines whether an inmate is sent to a higher-or lower-security setting? Will the assessment process be standardized throughout the department?*

The introduction of the automated risk and needs assessment tool, known as COMPAS, within the RCs, is an undertaking of Adult Programs. Adult Programs adopted a phased, incremental approach to implementation of the COMPAS. They began with four RCs in June 2007, and by the end of that year transitioned the program to the remaining eight RCs.

The first step toward integration of the COMPAS into the classification process is to utilize the results when determining which prison an inmate is transferred to when he or she leaves the RC. In February 2008, direction was provided to Adult Operations staff to use the COMPAS results when making placement decisions. It is important to note the COMPAS tool is not designed to determine an inmate's custody or security level.

The COMPAS instrument is intended to be the initial screening assessment which identifies the rehabilitative treatment areas an offender will benefit from. Staff within the identified treatment areas will then conduct a secondary assessment to define the inmate's specific needs and develop an effective treatment approach. Adult Programs plan is to incorporate this information into a case plan for the inmate, which will be used in the institution classification and assignment process for program placement.

The policies and procedures for inclusion of the case plan into the classification and inmate assignment processes are still being developed by Adult Programs in collaboration with Adult Operations. A specific date to further incorporate the COMPAS into the classification system has not yet been defined.

It is my understanding that Adult Programs is developing an assessment process that will be standardized throughout the Department.

Gangs, Violence and Contraband

Racial segregation has been used in California prisons as a way to separate prison gangs and reduce violence. But in 2005 the U.S. Supreme Court ruled that the State could segregate prisoners by race only in rare instances. In the wake of the decision, the state announced a legal settlement phasing out segregating inmates along racial lines.

16. What progress has the department made toward implementing the settlement? What is your timetable?

In response to the Supreme Court decision, CDCR developed a three-phased approach to implementation of integrated housing in California prisons. Phase I, which began in February 2007, involves designation of a housing code for each inmate to identify the eligibility for racially integrated housing. The code will reflect whether the inmate can be housed with all races, with only certain races, or with only his own race based upon individual case factors. The coding is being accomplished for new arrivals at RCs and for the existing population within the General Population (GP) institutions. The goal is to complete this process by July 2008.

Other accomplishments to date toward implementation include policy development; database modification; development of training curriculum, training videos and written education materials; equipment purchasing; and identification of staff resources for implementation. In addition, the Department has been educating both staff and inmates on the integration policy. The training video is viewed by inmates during orientation and repeatedly on the institution educational channel, as well as by staff during in-service training.

The Department is on schedule for implementation of Phase II in July 2008, at which time phased implementation of In-Cell Integration at Sierra Conversation Center and Mule Creek State Prison will begin utilizing the inmate's identified code when making housing decisions.

The Department is cautiously working through this implementation as racial unrest amongst the inmates is an everyday reality. Beginning at two prisons with largely compliant populations will permit us to gauge operational implementation. Only the inmates whose criminal behavior is directly related to racial bias will be excluded from participation. The wholesale movement of existing inmates to racial integration is not being considered. However, through attrition and as inmates are received at racially integrated prisons, housing decisions will not be based solely upon race, but rather the inmate will be moved to the next available and appropriate bed commensurate with his individual case factors.

CDCR will evaluate this phase of implementation carefully before proceeding to additional prisons. Next phase determinations will be made after critical review of this initial implementation.

17. *What is CDCR's prison gang strategy?*

Gangs, and associated violence, represent one of the most insidious threats to safety and security of inmates, staff and the general public. The Department's process of gang validation and segregation in Security Housing Unit (SHU) has been focused on prison gangs. This strategy isolates gang leaders, but other inmates with ties to the gangs continue their criminal behavior and intimidation in many of our GP prisons. Approximately 20,000 inmates currently reside in prison facilities identified as Sensitive Needs Yards (SNY). A majority of these inmates are targeted for violence by the gangs and require separation from other GP inmates. Inmates choose SNY status as a means to disassociate from the influences of gangs. The implementation of any strategy to rehabilitate inmates must address the negative influences that gangs have in our prisons today.

CDCR recently contracted with national experts on gang management to evaluate our gang management process. These experts identified the need to expand beyond simple prison gangs and include Security Threat Groups (STG) (inclusive of street gangs such as Crips, Skinheads, Northern/Southern Hispanics). The experts recommended a STG management process to include certification of group as a STG, validation of members, a STG phased segregated housing with sanctions/rewards for positive programming, debriefing process, and implementation of STG Case Reporting and Tracking system. The Secretary is currently considering these recommendations.

The Department's strategy to this point has been one of identification, validation, surveillance, and segregation. Staff dedicated to gang management at the prisons and in the Office of Correctional Safety (OCS) have worked hard in these efforts to suppress the influence of the prison gangs. These efforts for many reasons, including overcrowding and the lack of a centralized intelligence and information management system, have only deterred, not eliminated, the negative influences of this criminal lifestyle. Gang members also need the ability to safely disassociate from the gangs and the Department continues to facilitate this through our debriefing process. Under the leadership of Undersecretary Runnels and the OCS, focused operations on gang identification and segregation have recently been undertaken. Individual prison operations, like that of Pelican Bay State Prison (Short Corridor) have shown positive success in restricting communication from gang leaders to the prisons and signs of disrupted criminal activities have been realized. Prosecution of particular gang leaders has also diminished gang influence. In recent years, the Department has participated in six major federal Racketeer Influenced and Corrupt Organizations (RICO) cases. Cooperation with external law enforcement agencies and sharing of gang information has also made a positive impact. The CDCR has been the sponsor agency of the

February 19, 2008

California Gang Task Force, which includes representatives from over 150 law enforcement agencies, for more than thirty years.

True rehabilitation will not be realized until these negative influences are removed. More effective training of staff in the identification of gangs, increased emphasis on staff to document gang behavior, more options for housing gang members (such as the Behavior Modification Unit pilot at six prisons), and enhanced sanctions (both departmentally and criminally) will complement existing strategies.

18. *How are you addressing the problem of inmates' access to cell phones?*

Cell phones and other communication devices have proliferated prisons throughout the state, nation, and internationally. They represent a direct threat to institutional security and public safety. Efforts to date have focused on investigative intelligence and basic searching of our prisons. Staff have done a credible job in these basic efforts and the numbers of confiscated devices only emphasizes the significant threat. In 2006, staff discovered 261 phones, 992 phones in 2007 and 216 phones year to date. Correctional practices such as intelligence gathering and searching are the primary components of a sound correctional policy to deal with this contraband, but additional tools and policy direction is necessary to enhance these efforts.

The Department established a Warden's Advisory Group specifically to address communication contraband. This group is comprised of experienced Wardens from a variety of prisons and headquarters personnel who meet regularly, with documented meeting minutes, and evaluate/recommend both short-term and systemic remedies to the problem. They are reviewing the problem in three basic categories: legislation, entrance security, and technology.

The Department is evaluating legislative action to make the introduction of a cell phone and other listening device(s) to any person under the jurisdiction of CDCR a felony and punishable by imprisonment in State prison. The Department currently terminates staff who are caught introducing cells phones into the institutions. However, the lucrative nature of this contraband and the absence of severe sanctions, have directly lead to the proliferation of these devices. I believe the criminalization of this behavior will have a direct and lasting deterrence and slow the introduction of this type of contraband into our prison system. This, coupled with existing basic practices (intelligence gathering and thorough searches), will have the most profound impact on this threat in the short term.

The technology used for detection or jamming of electronic devices has been evaluated. The technology is in its infancy and the hard construction of prisons does not lend to its effective use. A recent pilot at California State Prison – Sacramento determined the equipment to be marginally effective and extremely costly. I reviewed an estimate which indicated the necessary equipment would cost approximately \$100,000 per building.

Based upon this estimate, a typical prison would require about \$2.4 million of equipment just to cover the housing units. With 33 prisons and many other buildings where inmates congregate, the costs are prohibitive. As stated though, the technology is advancing and more cost-effective solutions may be available in the future.

Enhancement of Entrance Security practices and equipment is a viable option to reduce the introduction of this contraband. A more thorough staff/visitor searching policy, x-ray technology for searching of brief cases and lunch boxes, communication device accountability systems (check in/out system), standardization of allowable items into the prison, and evaluation of existing staff resources at entrance points are all being considered by the group. Many of these remedies must be considered as long-term solutions, as labor negotiations and fiscal impact require external approvals.

In the meantime, the CDCR continues to exchange information with the National Institute of Corrections and other Corrections officials across the country to keep abreast of resolutions and new technologies being considered, as well as learn of newly identified means of introduction of cell phones into correctional facilities. Moreover, the Department will continue to track incidents of communication device contraband discovered within our prisons and report statistical incidence while simultaneously pursuing the above noted resolutions. The Department recognizes the tangible threat cell phones represent and is committed to evaluating all means to curtail that threat.

19. *What are you doing to address the continuing problem of inmate access to illegal substances?*

Illegal drugs represent, in my opinion, the most detrimental barrier to rehabilitation. Illegal drugs fuel gangs, encourage violence, ruin lives and jeopardize institutional security and public safety. Drugs have been an illicit activity present within the prison system during all of my 25 years of state service. I have witnessed murders, overdoses, stabbings, and other human tragedy directly linked to illegal drugs and the financial reward inherent with this criminal activity. I have seen attempts at smuggling drugs into our prisons in the diapers of babies, in the bodies of children, and by grandmothers. I have seen tenured staff compromise their livelihood all in the pursuit of drugs. Like in society, but exaggerated exponentially in our prison system, illegal drugs are the common thread for criminal behavior which results in un-determinable fiscal impact to the State.

The methods of introduction of drugs into prisons must be the focus point for all eradication efforts. Visiting, mail, packages, and staff access/egress locations are the central points of introduction. Eradication efforts continue to be an organizational focus and these efforts will only serve to slow the introduction of contraband. Investigative resources are limited for these efforts, but emphasis on the need for all employees to be aware of drug introduction or use within the prisons is a departmental priority

February 19, 2008

The Department has employed drug detection technology, x-ray equipment for mail and packages, drug sniffing dogs, camera surveillance in visiting rooms, drug testing of offenders, telephone monitoring, and cooperative investigation with external law enforcement agencies as means to deter drug introduction. Efforts on treatment of the offender include Substance Abuse Programs (SAP), Narcotic/Alcohol Anonymous self-help programs, and mental health services. Aggressive prosecution of inmates, visitors, and staff by local law enforcement authorities too has been undertaken. Training of staff on the identification of illegal drugs and the effects on individuals is on-going in our prisons and parole offices. On parole, regular searching and drug testing of offenders is employed and programs to address addiction is a core curriculum in our programs. Parole residential programs, both in-custody and in the community, focus on treating addictions. Emphasis on getting the offender into treatment programs, even as an alternative sanction to incarceration, is another organizational priority.

I believe one of my primary responsibilities as a leader in the Organization is to provide a safe environment for staff, inmates, and visitors. Illegal drugs represent a direct threat to this organizational goal. Basic correctional practices, such as the regular and effective eradication efforts mentioned above, and proactive treatment modalities is our two-pronged approach to combat illegal drugs and their disastrous and costly impacts to offenders under our charge.

Lockdowns and “Modified Programming”

When violence erupts, the movement of inmates is often restricted, or prisoners are locked in their cells until authorities can sort out what happened. When these restrictions are imposed, education and other programs typically are suspended or “modified.” One example began in 2005 when Calipatria State Prison experienced the most violent incident since the prison opened in 1992. According to department officials, this lockdown lasted 18 months for some inmates. During this time there was limited opportunity for educational programming.

20. At what point would you expect to be notified of a lockdown? Who decides when to resume normal programming?

In my 25 years experience, lockdowns and modified programs are essential to custodial operations. Even with excessive overcrowding and gang violence, CDCR has operated volatile prison environments the safest in the nation. CDCR has very few escapes and very limited loss of facilities due to inmate unrest in spite of these adverse conditions. Sound emergency response protocols and focus on basic security principles have placed California amongst the top in the ultimate category - public safety. I am very proud of the Department's success in this area and understand that commitment, leadership, and unwavering attention to basic security practices is my challenge to maintain.

February 19, 2008

Lockdowns and modified programs are the responsibility of the Warden and his/her executive team. They are on the ground, touching and feeling the environment, and are the only individuals with sufficient information to make the important decision of when to resume normal program. As a Warden, I was involved in hundreds of situations that required an executive decision. I was aware of the departmental expectation to get inmates back into programs as soon as possible and aware of the risk associated with releasing too early and the predictable violence that could result. While it is true the Department has received criticism for excessive lockdowns, the Department also continues to be sued for releasing inmates from lockdowns too early when violence subsequently erupts. The balance of these dynamics and the ability to accept risk rests solely with the Warden and his/her team. This is not to say that headquarters' oversight should not be directly involved in the decision, nor absolve executive level oversight to ensure the decision-making is sound.

I am provided daily notification of any incident that results in lockdown or modified program. Prisons are expected to report to the Associate Director, Deputy Director, and Director via a Program Status Report, initially and weekly thereafter for any incident that results in modification of normal programming. If the modified program exceeds 60 days, weekly telephonic meetings occur between the Warden and Associate Director. These reviews are intended to minimize impact to program and get the facility to normal operations as soon as possible. I am confident this structure provides reasonable headquarters' oversight into these challenging and often complex matters, and minimizes lockdowns and modified programs. The Warden and his/her executive team have responsibility to decide when to resume normal programming with Associate Director, Deputy Director, Director and, ultimately, Chief Deputy Secretary oversight, if necessary.

21. *CDCR has been criticized for locking down too many for too long instead of seeking out specific inmates who cause disturbance. What is current CDCR policy?*

The Department's policy on lockdowns and modified programs very reasonably rests with the Warden and executive team to determine the threat of potential unrest within a particular group when considering to resume normal programming. The criticism that locking down too many for too long does not recognize the potential for violence and bad outcomes from prematurely unlocking and the counter-criticism that authorities should have known that violence would ensue. It is very much an art and not a science that Wardens and their teams, including headquarters, must wrestle with daily in overcrowding and gang infested environments. As provided in the previous response, the policy requires immediate and regular reporting requirements, headquarters' oversight weekly and telephonic review at 60 days and weekly thereafter. Even at that, the ongoing gathering of intelligence and volatile nature of the threat can only really be understood by the staff at the particular facility who are feeling the tension and getting

February 19, 2008

the information first hand. CDCR staff very capably perform this function better than most systems in the nation given the environment and overcrowding inherent in our system.

As the Director, I had a situation at High Desert State Prison wherein inmates from a specific group brutally attacked a staff member on a facility. The Warden and his team modified program for the entire prison and devised a search plan that included all facilities. Through the program status report process, and after being advised by the Associate Director that in their opinion the modified program was over-broad, I conducted a telephonic interview with the Warden and his executive team. Through the discussion I was not convinced the threat assessment applied to all facilities. I ordered the unaffected facilities to return to normal program against the protest of the executive team. I offer this only as an example of the existing process to ensure reasonable headquarters' oversight and monitoring of lockdowns and modified programs throughout the prison system.

I recognize the goal is to focus enforcement on those individuals that perpetuate gang/racial violence and expedite release for those inmates who are willing to program. I also understand the delicate decision-making process the Wardens must go through in making these determinations. The clear goal is to get unaffected inmates back to normal programming as soon as possible – safely. I have communicated this goal to Wardens directly and believe they fully understand and accept the risk associated with these critical decisions. Through interactive discussion, threat assessments, and risk calculation, I believe the Department makes the right decision, based on information gathered, much more than the wrong decision. My goal is to ensure common sense and factual information is considered in this critical decision-making process and support the leaders and staff who, at the ground level, must deal with the consequences of the decision.

Family Ties

The value of inmates maintaining family ties was recognized in recidivism reduction plans. But many institutions have little or no space to process visitors who, in some cases, stand outside for several hours without shelter from sun or rain, waiting to visit inmates. Visits are terminated by staff when small visiting areas become overcrowded. At his confirmation hearing last year, Corrections Secretary Jim Tilton said providing access for visiting was a priority for him.

- 22. Who monitors visiting practices for consistency? Who tracks visitor processing times and the number of terminated visits? Are improvements for processing visitors and visiting areas now being contemplated as part of recidivism reduction or AB 900 efforts?**

February 19, 2008

The DAI is responsible for monitoring visiting practices within the institutions. However, Wardens and their staff are ultimately responsible to ensure compliance with the departmental expectation that visiting is conducted in a clean, positive, and safe environment, as well as reasonable enforcement of visiting policies. It is my responsibility to ensure visiting policy is reflective of the Department's expectation and that staff understand the importance of compliance.

The Associate Director, Female Programs, has primary responsibility for oversight of the visiting programs. Each Associate Director has functional responsibility over visiting programs within their assigned institutions. The Deputy Director and Director provide overall management of the program and are tasked with chairing the Inmate Family Council. On a weekly basis, each institution sends visiting related data to their respective Associate Director. This information, which includes the number of visitors, inmates participating, and terminations, is provided to Female Programs for compilation on a statewide basis. Visitor processing times are tracked locally. If complaints are made, the responsible mission investigates the issue through resolution. This information is used to monitor institutional operations and for decisions related to possible expansions.

In Fiscal Year (FY) 2006/07, Recidivism Reduction Strategies (RRS) Budget Change Proposal (BCP) funding was included to expand visiting to an additional day at 10 male prisons. In addition, the Chowchilla Family Express was established at two female institutions, which provides bus transportation for inmate families once a month at two Central Valley women's institutions. These 12 prisons received a Family Services Coordinator position to assist inmates and their families with issues related to family reunification.

In FY 2007/08, the visiting program was expanded to an additional 10 institutions. As of January 2008, a total of 22 prisons participate in either the 3rd Day Visiting Program or the Chowchilla Family Express. Information on visiting terminations and other data collected by each mission was used in determining which institutions to select for this expansion.

AB 900 does not include funding for facility improvements to visiting and visiting processing areas. However, there are current projects underway to construct visiting processing centers at Correctional Training Facility and California Institution for Women, to provide indoor processing. In addition, Our House, a brand new Child Space visiting facility was completed and activated in April 2007 at the California Institution for Women for mediated family visits.

It has been my experience that visiting at the institution level sets a culture within the prison environment. As a Warden, I would tour the visiting rooms often, talk with visitors waiting processing and ensure that common sense application of policy was expected of staff, inmates and the general public. This level of interaction at the warden level

February 19, 2008

ensured all involved understood the importance of visiting as a program that made the prison safer and contributed to family unification. Secretary Tilton has reinforced this expectation as a priority for the Department. With limited resources and significant priorities, physical plant modifications may be delayed. Creating a culture where all involved understand visiting is a priority will mitigate delays in potential plant modifications and enhance the visiting program for all.

23. *How would you describe your relationship with inmate family councils? How often do you meet with the statewide inmate family council or those at individual institutions?*

The day-to-day interaction with inmate family councils is delegated to Wardens who are in the best position to respond proactively to local issues. Statewide Inmate Family Council issues are addressed by the Directorate and Associate Director, Female Programs. In my previous positions as Warden, Associate Director, Deputy Director and Director, I interacted with local and statewide councils on a variety of issues impacting visiting and prison operations. Minutes of these official meetings were published, assignments were issued and issues were resolved. My current assignment does not provide that level of direct involvement; however, DAI Director Hubbard provides me with regular briefings on visiting issues impacting the Department.

While I do not have direct communication with local Inmate Family Councils, I affirm regularly the Department's commitment to proactive resolution of issues raised at the local level. Through regular meetings with Wardens, weekly interaction with DAI executive staff, and on field visits, this expectation is reinforced. I believe the organizational structure developed for the Inmate Family Councils lends to efficient resolution of issues at the lowest level possible while availing communication to the highest level, when necessary.

I would define my relationship with the statewide Inmate Family Council as positive. We have interacted on a variety of issues regarding policy and I have been proactive in addressing their concerns and responsive to requests for information. The statewide Chair has communicated with me on visiting and other related inmate issues. I think he would acknowledge my involvement in ensuring problems are raised and solutions sought for a variety of issues impacting inmates and their families. Our established relationship provides an environment wherein they communicate to me matters that are unresolved at lower levels of the organization, and permit me to communicate to them for reciprocal concerns.

Reentry Planning and Parole

Corrections administrators have talked about the need to better plan for the reentry of inmates into society, including a process that would provide every inmate with a risk and needs assessment that would be administered upon arrival in prison and utilized in a seamless fashion through parole. Even before the department started using the Compas assessment tool for new inmates, thousands of prisoners approaching parole began to be screened for their risks and needs on the outside. More than 60,000 inmates have been assessed this way using the Compas instrument.

24. Who will evaluate the effectiveness of parole planning efforts? What roll will you play?

The common sense logic of providing a validated needs assessment to offenders and incorporating this information into a "case plan" for the offender should not be understated. The application of COMPAS assessments at reception and upon parole seems a logical transition to more responsive identification of programs for offenders that will lead to successful transition from incarceration.

Programming, including effectiveness of parole planning efforts, is the responsibility of the Undersecretary, Programs, and the Chief Deputy Secretary, Adult Programs. While I and Operations staff have a supportive role in this admirable endeavor, the onus of implementation and evaluation rests with Programs. Parole and institutional staff are tasked with applying the tool, ensuring the tool is considered in program determinations and Committee actions, and getting the offender to the appropriate program. The program and its efficacy to the offender rest with the Programs leadership and the support of all organizational resources. The participation of the offender, his/her attendance and behavior at the program, and the resolution of custodial concerns rest solely as my role in programming. Jointly, Operations and Programs need to work together to apply this common sense tool and get the offender to the appropriate program.

I do not want to underestimate my role or responsibility or that of my staff. Operations and Programs staff is inexorably co-joined in this effort. We share responsibility for the offender during incarceration and parole and equally share in the responsibility to get the offender to the most effective program to stop the culture of incarceration. Clear roles are as important to this organizational goal as effective programming. While lines of responsibility overlap somewhat between program and operations the executive leadership understands that clear delegation of responsibility is crucial to organizational success.

In 2005, DAPO, prior to the elevation of the Adult Programs to the organizational structure, did conduct an evaluation of the parole planning efforts. As a result, the Parole Planning and Placement (PPP) program was re-designed. The purpose of the

February 19, 2008

PPP program is to obtain and utilize pertinent information about offenders in order to develop and implement effective and specific re-entry plans that maximize a parolee's opportunity to successfully reintegrate into the community. The PPP program provides proactive involvement within the institutional settings, in establishing and solidifying parole planning for inmates prior to their release into the community, through the use of the COMPAS risk/needs assessment tool.

DAPO administration is actively involved with field staff in the continued evaluation, development and refinement of the COMPAS assessment tool, as it continues to integrate the tool into its field operations.

In addition, in April 2007, the CDCR Office of Research executed a three-year contract with the University of California, Los Angeles, to conduct a validation and evaluation of the COMPAS risk/needs assessment. It is through this professional research study that CDCR will truly evaluate COMPAS effectiveness. Upon completion of the study, it will be my responsibility to ensure the outcomes are evaluated and all necessary changes are made to the parole planning process that increase the success of inmates integrating back into society.

25. When will the department be screening all inmates who enter the system, and how often will reassessments be conducted?

In 2006, the DAPO began conducting COMPAS assessments of eligible inmates who were within 240 days of release. In 2007, the RRS plan incorporated a phased in approach to implementing this an automated risk and needs assessment tool upon an inmate's reception into CDCR. The plan provided for a phased approach toward implementation. With resources provided from the RRS BCP in FY 2006/07, Phase I was completed in June 2007, when Adult Programs began conducting assessments of eligible inmates at four RCs. Phase II, required the expansion of the program to all 12 RCs by June 2008. This expansion was accomplished in November 2007 in limited capacity. Based upon resource availability, the initial eligible population in the male reception centers has been established as those inmates with a new commitment serving more than 240 days; at female institutions, the eligible population is all inmates who are serving more than 240 days.

Phase III sets forth the expansion of the COMPAS assessments into the GP facilities between July 2008 and June 2010.

Introducing the use of an automated assessment tool into a department of this size is a challenging task. The Department is still in the process of developing comprehensive strategies for the inclusion of the assessment tool into its program placement processes. These steps include developing policy and procedures for full integration into the classification system; determining the best way to facilitate its integration into

daily operations; and to identify the key times during an inmate's incarceration when assessments and reassessments should be completed.

The intent is to develop a process which will allow CDCR to begin the assessment of the offender upon reception, reassess his/her needs throughout the incarceration period and prior to parole.

Even while CDCR continues with the development and implementation of the COMPAS assessment, it is important to recognize the outstanding assessment processes that are already in place. CDCR staff currently ensure all inmates receive appropriate assessments and evaluations in existing medical, dental, mental health, educational, and classification processes. Each of these occur at established intervals throughout an inmates incarceration period.

CDCR anticipates meeting its goal of completing COMPAS assessments on all inmates from reception through discharge by June 2010.

26. *The Division of Education, which reports to the undersecretary for Programs, is responsible for implementing the risk needs assessments. Do wardens who are under your supervision play a role in ensuring that the assessments and placements are accomplished? If so, please explain.*

The successful implementation of COMPAS is predicated on the engagement of both operations and program staff. The Warden must dedicate resources in the support of program staff actually implementing the instrument. Examples include procurement of necessary equipment, intranet connectivity, access to Central Files, appropriate space, and access to inmates. The Warden will ensure appropriate procedures are established, and staff responsiveness to these procedures, to effectuate Program staff implementation of the tool. As Chairperson of Institutional Classification Committee (ICC), the Warden will ensure that identified needs of the offender are met and/or initiate transfer of the inmate to a program, when possible, that will meet the needs of the offender. This integration of tool and program is very much a collaborative effort of institutional staff and program staff.

Recently the Department directed field staff to incorporate the COMPAS instrument into the Central File. Additionally, direction was provided to Classification and Services Representatives (CSR's) to consider COMPAS information when endorsing inmates to particular prisons with particular programs. This integration of the assessment tool, in its infancy, is the responsibility of field and headquarters' Operations staff, including me and my executive team.

February 19, 2008

27. *Corrections officials and outside prison experts note that the biggest challenge for many newly released parolees is finding a place to live. Who in your agency is responsible for identifying additional housing options for those recently released?*

The Director, DAPO, is ultimately responsible for parole programs dedicated to finding parolee housing. The Parole Program Development Unit operates the Preventing Parolee Crime Program (PPCP). One component of the PPCP includes residential multi-service centers. Housing options are available to released offenders through CDCR funded programs: Residential Multi-service Centers, Female Residential Multi-Service Centers, Parolee Service Centers, Day Reporting Centers, Parolee Substance Abuse Programs, In-custody Drug Treatment Programs with community based aftercare component, and Senate Bill 1453, which includes a residential aftercare drug treatment component for those parolees eligible. DAPO also funds parolees' housing needs on a temporary basis with Case Work Services funds.

The Department, for public safety reasons, has placed particular emphasis on housing for High Risk Sex Offenders (HRSO). Each Parole Region is staffed with an HRSO Housing Coordinator who works with community representatives to find suitable housing for parolees that must comply with Jessica's Law. A significant portion of DAPO discretionary parolee resources are dedicated to this population.

The Police and Corrections Team (PACT), a mandated program within each Region, brings community providers to new parolees that offer a variety of services, including residential, to assist in the first critical months of parole. Having attended several PACT meetings, I cannot overstate the value of connecting the parolee with providers for services and housing in this initial transition from incarceration to parolee.

It is an understatement that appropriate housing is a primary element to successful parole. Employment and transportation offer significant challenges to an offender transitioning to the community, but housing, at least antidotal to me, offers the greatest challenge. I am proud of the programs that are administered by DAPO that service the parolee community and the exceptional employees committed to addressing the obvious hurdles of parolee programs and housing throughout the state. There is much more work to do in this area.

28. *What challenges do you face in implementing Proposition 83 known as Jessica's Law?*

The supervision of sex offender parolees is an essential public safety responsibility. The passage of Proposition 83 (Jessica's Law) imposed legal mandates that operationally offered significant challenges. The mandates of Global Positioning Satellite (GPS) and residency restrictions, coupled with the sex offender homeless

February 19, 2008

population has presented many challenges and required considerable organizational coordination.

The GPS mandate challenges the Department in a number of ways. It required the Department to procure private vendor services, required dedicated agent caseloads and extensive training to staff and parolees. Unanswered questions such as application of the law prospectively or retroactively, complicated and delayed activation. The legal decision of prospective application was decided by the court and the Department has aggressively pursued implementation. At this time, 3,599 sex offenders are equipped with monitoring devices and are supervised by dedicated agents. It is projected that by June 2008, the Department will have all High Risk Sex Offenders (HRSO) on GPS monitoring (approximately 3,000) and by early June 2009, all non HRSO parolees required to register under Penal Code 290 on GPS monitoring (approximately 5,200). Life-time GPS monitoring for these offenders is a mandate of the statute, but jurisdictional issues after an inmate discharges from CDCR remain unresolved.

The residency restrictions of Jessica's Law also pose real challenges for departmental staff. The 2,000 foot restriction from schools or where children congregate require agents to physically measure residencies of sex offenders. When the measurement identifies a violation, the offender is required to find a new living arrangement. Offenders declaring transient status, a legal status in California, require daily contact with the parole agent. In some geographical areas housing for these offenders is simply unavailable. DAPO staff continue to work through these issues in an effort to provide effective supervision to these parolees.

While faced with these challenges, significant accomplishments and intense work has been completed by DAPO in the implementation of the largest GPS program in the nation and we are already seeing positive results. While recently visiting a Southern California parole office, I spoke with parolees and their agents regarding the GPS monitoring. During that visit, a story was relayed to me that reinforced the public safety aspects of Jessica's Law. An unidentified man had sexually accosted some children at a department store. The local news agencies were running grainy pictures of the suspect from store cameras. A GPS agent saw the news report and believed it might be one of his assigned parolees. He responded to the parole office and viewed the parolee's GPS tracks. Through this law enforcement tool, it was determined the sex offender had been in the store in question at the exact time the assault had occurred. This and many more real examples aptly prove the tool, and the dedicated DAPO staff who apply it, are enhancing public safety in a significant way.

While many challenges exist, and much more work is to be done, I am proud of the accomplishments by this Department in the implementation of Jessica's Law. We are working through these complex and sensitive issues while concurrently focusing on full implementation with the ultimate goal of increased public safety.

February 19, 2008

Infrastructure

Overcrowding has resulted in heavy usage of sewage and wastewater systems in some prison. Prison managers complain about their inability to keep up with regular maintenance. At some older prisons, managers are hard-pressed to retain staff trained as locksmiths or in other essential jobs.

29. *How do the wardens who report to you work with CDCR staff in other divisions on infrastructure issues? For example, whose job is it to document and address problems with drinking water or wastewater treatment at an institution? Who decides the way in which the situation should impact local staff and inmates, such as less water to drink, fewer showers, and fewer toilet flushes. How is the department ensuring that the construction required by AB 900 will not exacerbate infrastructure issues, such as a lack of wastewater capacity?*

As a Warden, I was immersed in Plant Operations issues that required interaction with staff from the FMD. Most prisons are impacted by aging infrastructure, limited resources, and fiscal limitations to address these complex and often community impacting concerns. FMD provided the technical expertise to identify problems and solutions. The Department's Legal Division was also involved in communication to community representatives and the courts and provides advice on official departmental responses. The organizational structure is defined to direct such field/headquarters interaction via the Associate Directors and the Directorate. As Chief Deputy Secretary, it is my expectation that these collaborative efforts continue.

Several prisons have existing infrastructure problems ranging from waste water capacity to aged or failing locking systems. In such instances, the Warden should document the issues to FMD, via the Directorate, and either recommend a mitigated solution or request technical assistance from the FMD experts. The Associate Director and Directorate are responsible to engage other departmental assets to ensure timely response to the field. It is a joint responsibility with the Warden, FMD, DAI and other Divisions (i.e. Budgets, Legal) and, on occasion, other state departments (i.e. Department of General Services, Department of Real Estate) to address the problem and develop a solution.

The rationing of water, reduced showering, electrical conservation, installation of conservation equipment would be ordered by FMD, or State regulatory agencies. The Warden would be responsible for implementation. For example, during ongoing periods of electrical shortages some prisons were ordered to reduce power usage. The Wardens, with assistance of FMD, employed electrical rationing techniques, including suspension of inmate programming during peak use hours. The Wardens operationalized the control agency direction through consultation with FMD,

Senate Rules Committee
Scott Kernan
Page 34 of 34

February 19, 2008

communicated to staff and inmates what would occur and why, and then implemented the ration. The Wardens consulted with the Directorate on implementation questions. This communication ensures the Directorate monitors statewide issues and/or compliance with the emergency directives.

In late 2005, I was placed on special assignment at headquarters to develop a population management plan. The plan included the construction of additional housing at existing institutions. The plan included a preliminary evaluation of infrastructure deficiencies by FMD, consultants, and institutional Plant Operations staff. This plan, which ultimately evolved into AB 900 Infill Program, made provisions that a detailed infrastructure analysis by technical experts would be obtained before additional housing was constructed. As such, the funding request for AB 900 included resources for infrastructure mitigation, improvements and, in some instances, new construction of Plant assets. Moreover, licensing agencies and public approval of these projects will ensure that infrastructure resources are expanded or constructed and approved before additional capacity can be accomplished.

4 March 2008

Senate Rules Committee
Don Perata, Chairman

Dear Mr. Perata,

I regret my tardiness in getting this letter to you and am pleased that you will be having a hearing on my confirmation tomorrow.

As a public appointee on the Board of Behavioral Sciences, my goals are to properly represent the consumer and give voice to the issues that come before the board. I am also passionate about giving my input to the importance of delving into co-occurring disorders in the mental health fields and am working with some of the staff on the BBS in gathering information that would be helpful in furthering this goal.

In addition, I have been on the MFT curriculum committee to update the curriculum to match the needs of this field in current time and have joined the committee for the LCSW curriculum updates to achieve compatible results taking into account the need for more education in the areas of co-occurring disorders. I have also added my voice for the current examinations committee so that some solutions might be found to our problematic examination procedures.

As chairperson of the Policy and Advocacy committee, I feel I also have another opportunity to voice the consumer concerns in matters brought to that venue.

I hope this is sufficient in stating my goals for the future of my appointment on the Board of Behavioral Sciences.

Sincerely,


Gordonna DiGiorgio

Senate Rules Committee

MAR 04 2008

Appointments

26 February 2008

Don Perata
Chairman
Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814-4900

Dear Mr. Perata:

I received your letter regarding the upcoming hearing for my confirmation as a member of the board for the Board of Behavioral Sciences. Per your request, please find a statement of my interest in and goals while a board member for the Board of Behavioral Sciences.

I want to be a board member because I am at a point in my career when I want to be a part of making positive changes to the fields of Marriage and Family Therapy and Clinical Social Work. While there are many things that I believe past boards have done well, I feel there was still much to do. With so many licensed therapists in our state serving such a diverse population, I believe that there are unique challenges in order to ensure that services are being rendered in an ethical, professional and safe manner.

I am particularly interested in the different stages that prepare and/or educate a potential or licensed therapist to practice independently or adequately in a clinic setting. I had concerns about the credit and practicum requirements for MFTs believing from my own experience, that more and different education and practicum experiences were needed to prepare me and other MFTs to practice effectively in the settings where services are most needed, those being clinics serving the poor and needy in rural and urban settings doing non-traditional work in order to best meet the mental health needs of the population.

I was pleased to find that the board had already begun addressing educational requirements for Marriage and Family Therapists. We are ready to introduce legislation to support improved curriculum requirements to better prepare MFT graduates to practice in a variety of settings.

Another area of interest prior to becoming a board member was the quality of supervision and the lack of clear and concise information about the requirements of a supervisor and the supervisee. The board was already addressing those areas prior to my appointment. I want to ensure we continue to move forward with guidelines and parameters so that candidates are being properly trained at this level of their education moving them forward to be confident in their ability to practice therapy independently and supervisors feel comfortable that they are fulfilling their requirements and adequately preparing candidates.

Senate Rules Committee

FEB 29 2008

Appointments

I am now the Chairman of the Testing Committee to look at how the board tests candidates for licensure. I believe that it is imperative that the board address testing periodically to ensure that the tests used are the best vehicles for measuring therapist competency. The testing stage is critical to weed out candidates not prepared to practice safely. It is a difficult task to develop tests that measure knowledge and competency, so I believe that we can and should always be looking at the ways we license our therapists so that we can be assured to the best of our ability, that our licensed professionals will be ethical, safe and competent.

I want to be an active board member knowledgeable of the issues facing our constituents whether they are providers or consumers. Our world and state is constantly changing, so I want to ensure that the BBS is continually addressing the changes to be confident that the best services are provided and accessible to all in need. I hope to be active in seeking input from constituents throughout the state. I have already begun seeking input from colleagues and consumers and have encouraged attendance and participation at board meetings.

I believe that I will be able to measure my success by my knowledge gained and shared, by different legislative items introduced by the board in support of positive changes, by attendance at and participation in board meetings and by voicing and hearing the opinions of the public. I believe that when complaints by consumers, applicants and supervisors lessen, I will know that I have been a part of a successful board that has been active in making necessary changes.

Should you have any further questions, please feel free to contact me.

Sincerely,

Elise H. Froistad, MFT
Board Member
Board of Behavioral Sciences

STATEMENT OF SHORT AND LONGTERM GOALS
FOR MARIA ARENA BELL
CONFIRMATION AS COMMISSIONER
COMMISSION FOR THE STATUS OF WOMEN

I, Maria Arena Bell, would be honored to serve as a Commissioner on the Commission for the Status of Women for the State of California. As a lifelong Californian and a businesswoman and philanthropist I have been touched by many of the issues affecting women in our state. As a woman whose grandmother was born on an orange ranch in Fullerton I have an understanding of our agricultural roots and as a member of the entertainment industry our complex present. As a California woman I have been a student, an employee, a boss, a mother, a fundraiser, a scout leader and a friend to those in need.

My short-term goals are to familiarize myself with all issues pertaining to the rights of women and girls. To understand the issues women face in the workplace, at home, at school, and in the community. To gain more knowledge of truly underserved segments of women and their lives to better understand the issues that affect them. My short-term agenda as a Commissioner is to attend our meetings, research the issues and gain an understanding of the vast dimension of challenges that women face in our state. My goal is to not be party or partisan but to understand issues and their impact on our society. I have been working toward that end already, in my role with the Commission thus far.

My long term goals are more far reaching and as much as I hope to be a vocal member of the Commission as well as assist in helping women find their voice, my successes as a nonprofit fundraiser have made me highly aware of the importance of creativity when bringing issues before the greater public. I believe that my asset to the Commission is my ability to creatively network and find ways to make the Commission more relevant, more effective, and make the voice of the Commission heard not more loudly but more clearly and effectively. My own expertise is in the arts, as I am chair of a nonprofit board, PS Arts which provides arts education in some of our states Title One Public Elementary Schools, and serve on many other boards and committees of arts organizations in Los Angeles and nationally. In the last year I was personally responsible for raising over five million dollars for the arts in California. The arts are a way to bring a voice and equality to women and girls and that is one area that I focus on and will continue to as a commissioner. I am also a female television writer, at the top of my profession in daytime television as the Head Writer of the program The Young and The Restless. I'm surrounded not only by women in my workplace but part of my job is creating and working with female characters and the issues they face. I'm honored as a female professional to consider issues for women which I have familiarity with and those that I do not... hoping to broaden my own knowledge and that of others.

Senate Rules Committee

MAR 03 2008

Appointments

My broader goal is to understand the many complex issues that women face every day all across our state, to make it my job to make others in the community and in the legislature aware of these issues, and to in any way possible help look for solutions.

585-R

Additional copies of this publication may be purchased for \$5.75 per copy
(includes shipping and handling) plus current California sales tax.

Senate Publications & Flags
1020 N Street, Room B-53
Sacramento, CA 95814
(916) 651-1538

Make checks or money orders payable to **SENATE RULES COMMITTEE**.

Credit cards not accepted.

Please include stock number 585-R when ordering.

9

HEARING
SENATE RULES COMMITTEE
STATE OF CALIFORNIA



DOCUMENTS DEPT.

APR 1 2008

SAN FRANCISCO
PUBLIC LIBRARY

STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

WEDNESDAY, MARCH 26, 2008
1:35 P.M.

1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

3

4 HEARING

5

6

7

8

9

10 STATE CAPITOL

11 ROOM 113

12 SACRAMENTO, CALIFORNIA

13

14

15 WEDNESDAY, MARCH 26, 2008

16

17 1:35 P.M.

18

19

20

21

22

23

24 Reported by:

25

26 Evelyn J. Mizak

27 Shorthand Reporter

28

APPEARANCES

MEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR ROY ASHBURN, Vice Chair

SENATOR GIL CEDILLO

SENATOR ROBERT DUTTON

SENATOR ALEX PADILLA

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Appointments Consultant

BILL BAILEY Consultant to SENATOR ASHBURN

DAN SAVAGE Consultant to SENATOR CEDILLO

CURTIS BURNING - Senatorial - SENATOR BURNING

ALSO PRESENT

CARRIE L. LOPEZ, Director
Department of Consumer Affairs

SENATOR MARK RIDLEY-THOMAS

JIM CONRAN, President
Consumers First

ED HOWARD, Senior Counsel
Center for Public Interest Law

JOEL AYALA, CEO
California Hispanic Chambers of Commerce

STEVE SCHACHT
SCI
California Funeral Services
CMAC

1 MELINDA OPPERMAN, Vice President
Community Outreach

2 LUKE PATTERSON
3 California Association of Licensed Investigators

4 BARB JOHNSTON, Executive Director
5 Medical Board of California

6 DARCEL D. WOODS, Member
7 Board of Parole Hearings

8 WALTER ALLEN III, Part-time Deputy Commissioner,
Board of Parole Hearings

9 MICHAEL GASTON
10 Defense Attorney

11 JOHN RUIZ
12 District Attorney's Office
Riverside County

13 ALEXIS DE LA GARZA
14 District Attorney's Office
Los Angeles County

15 NANCY NAFTEL
16 District Attorney's Office
Los Angeles County

18 KEITH CHANDLER, Former Prisoner
Legal Assistant/Consultant

19 DIANE T. LETARTE
20 Defense Attorney

21 DONALD MILLER, Former Prisoner
22 Paralegal

23 KEITH WATTLEY, Managing Attorney
UnCommon Law

25 MARC NORTON
Defense Attorney

26 DAVID WARREN
27 Taxpayers for Improving Public Safety

INDEX

Page

2	Proceedings	1
3	<u>Governor's Appointees:</u>	
4	CARRIE L. LOPEZ, Director Department of Consumer Affairs	1
5	Opening Statement	
6	Introduction and Support by SENATOR MARK RIDLEY-THOMAS	2
7	Questions by SENATOR ASHBURN re:	
8	Audit of Board of Chiropractic Examiners	3
9	Role of Appointee	
10	Continuation of Opening Statement	5
11	Further Response to SENATOR ASHBURN by SENATOR RIDLEY-THOMAS	7
12	Questions by SENATOR PADILLA re:	
13	Status and Future of Diversion for Medical Board	7
14	Status of New Diversion Program	
15	Models of Similar Programs for Other Professions	10
16	Foreclosure Crisis	11
17	Recommendations to Business, Transportation and Housing Agency	14
18	Long-term Recommendations to Aid Consumers	15

1 Questions by CHAIRMAN PERATA re:

2 Sunset of Bureau on Private
3 Postsecondary Education 16

4 Witnesses in Support:

5 JIM CONRAN, President
6 Consumers First 17

7 ED HOWARD, Senior Counsel
8 Center for Public Interest Law 18

9 JOEL AYALA, Chief Executive Officer
10 California Hispanic Chambers of Commerce 19

11 STEVE SCHACHT
12 California Cemeteries and Funeral Directors 20

13 MELINDA OPPERMAN, Vice President
14 Community Outreach
15 Springboard 20

16 LUKE PATTERSON
17 California Association of Licensed Investigators 21

18 BARB JOHNSTON, Executive Director
19 Medical Board 21

20 Statements by CHAIRMAN PERATA re:

21 Encouragement to Bear Down on
22 Chiropractic Board 22

23 Need to Protect Students in Area of
24 Private Postsecondary Education 22

25 Motion to Confirm 23

26 Committee Action 23

27 DARCEL D. WOODS, Member
28 Board of Parole Hearings 23

29 Opening Statement 23

1 Questions by SENATOR PADILLA re:

2 Issue of Integrity of Parole
3 Hearing Process Raised by Many 26

4 Commitment Offense Often Retried in
5 Parole Hearings 26

6 Transcripts of Hearings Raise Concern 27

7 Statements by CHAIRMAN PERATA re:

8 Reasons for Allowing Consideration of
9 Appointment 28

10 Questions by CHAIRMAN PERATA re:

11 Statement in Written Responses that
12 Inmates "Pose No Further Threat" 28

13 Method Used to Determine When
14 Inmates Pose No Threat 29

15 "Unreasonable Risk" Versus "No
16 Further Threat" 30

17 Looking at Inmate's Past 31

18 Witnesses in Support:

19 WALTER ALLEN III, Part-time Deputy Commissioner
20 Board of Parole Hearings 32

21 MICHAEL GASTON
22 Defense Attorney 36

23 JOHN RUIZ, Deputy District Attorney
24 Riverside County 39

25 ALEXIS DE LA GARZA, Deputy District Attorney
26 Los Angeles County 43

27 NANCY NAFTEL, Deputy District Attorney
28 Los Angeles County 46

1 Witnesses in Opposition:

2	KEITH CHANDLER, Former Prisoner Legal Assistant and Consultant	51
3		
4	DIANE LETARTE Defense Attorney	54
5		
6	DONALD MILLER, Former Prisoner Paralegal	59
7		
8	KEITH WATTLEY, Managing Attorney UnCommon Law	67

9 Questions by SENATOR CEDILLO re:

10	Composition of Board Main Reason for Denials	67
11		
12	MARC NORTON Defense Attorney	71
13		
14	DAVID WARREN Taxpayers for Improving Public Safety	75

15 Questions by SENATOR ASHBURN re:

16	Professional Background	79
17		
18	Subjects Taught in Youth Authority	80
19		
20	Development of Empathy, not Bias	81
21	Shortcomings of System	81

21 Statements by CHAIRMAN PERATA re:

22	Position of Committee for More Diversity in Backgrounds of Appointees	82
23		
24	Broken System	83
25		
26	Administration's Inconsistency	83
27		
28	Cannot Allow Confirmation	84

1 Statements by SENATOR ASHBURN re:

2	Loss to State of California	85
3	Motion to Confirm	86
4	Committee Action	86
5	Termination of Proceedings	86
6	Certificate of Reporter	87
7	APPENDIX:	88
8	Written Responses to Committee Questions 9 By Appointees, as well as Written 10 Statements by Appointees Not Required to 11 Appear: Members of the California Horse 12 Racing Board: JESSE H. CHOPER and 13 JOHN C. HARRIS	
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

2 --ooOoo--

3 CHAIRMAN PERATA: We will begin with Carrie
4 Lopez, who's the Director of the Department of Consumer Affairs.
5 Welcome.

6 MS. LOPEZ: Thank you.

7 CHAIRMAN PERATA: It's all yours.

8 MS. LOPEZ: Thank you.

9 Good afternoon, distinguished Members of the
10 Legislature. Thank you so much for welcoming me in today on a
11 very important day in my life. So, I appreciate it.

12 It's been an honor to be nominated. It's been an
13 honor to serve this administration as Director of the Department
14 of Consumer Affairs. In all my years working in government-
15 related activities and training others to be leaders, I never
16 imagined that one day I'd be here before you. Even as a Senate
17 Fellow, when we were pretending to be going through this type of
18 procedure, and you all were represented by Pro Tem President
19 Roberti, and Senator Petris, and my home-town Senator Bill
20 Craven, it doesn't match up to what -- what the real experience
21 is.

22 When I was asked to serve by this administration
23 I was excited about the opportunity I had been given to serve
24 California and to add value in California being the best place
25 it can be for consumers and professionals we license. And when
26 the Governor appointed me as Director, I was more than ready to
27 implement a plan of action to help Consumer Affairs be the
28 ultimate resource for consumers and licensees. And since day

1 one on the job, we have made continuous improvements, and I'm
2 happy to report we are having great success.

3 Senator, would it be appropriate to have Senator
4 Ridley-Thomas come up now?

5 CHAIRMAN PERATA: It's up to you. I think you're
6 doing fine, but if you want him.

7 [Laughter.]

8 MS. LOPEZ: Thank you, Senator.

9 CHAIRMAN PERATA: Why don't we give him a moment.

10 SENATOR RIDLEY-THOMAS: Mr. Chairman, Members of
11 the Committee, permit me to engage in what you will obviously
12 interpret as an effort to slow down a very successful pursuit by
13 Ms. Lopez. And so, ma'am, the wisdom of the Chairman probably
14 should have been heeded. In this Committee particularly,
15 Senator Ashburn is waiting for the opportunity to acknowledge my
16 testimony. I'm sure of that.

17 Mr. Chairman, may I simply say to you, you've
18 already benefitted from Ms. Lopez's initial, that is to say,
19 preliminary remarks.

20 I think the Governor has shown great wisdom in
21 acknowledging her talents. She's invested in the leadership of
22 our state by looking to prospective leaders through the Coro
23 Foundation and served in exemplary fashion there. She followed
24 that with this opportunity to serve more directly the people of
25 the State of California.

26 Consumer protection she understands to be the
27 highest priority before us. And to that extent, her recent
28 work, specifically in the area of the audit of the Board of

1 Chiropractic Examiners, is one that she takes very seriously.
2 She's made that abundantly clear. As you know, we've paid a
3 close amount of attention to that issue both in the Assembly as
4 well as in the Senate. So, I have a high degree of respect for
5 the work that she has done, is doing, that which she pledges to
6 do.

7 Toward that end, her role in state government is
8 one that couldn't be more important at this point in time in our
9 history. It seems to me that we would be well served by your
10 favorable disposition of this nomination. And I simply commend
11 her to you accordingly, Mr. Chairman and Members of the
12 Committee.

13 CHAIRMAN PERATA: Mr. Ashburn, do you intend to
14 examine the witness?

15 SENATOR RIDLEY-THOMAS: Be gentle, please.

16 [Laughter.]

17 SENATOR ASHBURN: Actually, Mr. Chairman, if
18 you're willing, Senator Ridley-Thomas, on the issue that you
19 raised about the audit, the release of the audit with respect to
20 the Chiropractic Board, I know that you have devoted
21 considerable attention to that topic. And I would be interested
22 in your observations with respect to the role that the nominee
23 plays in resolving that issue.

24 And so, any comments that you would wish to offer
25 I would welcome.

26 SENATOR RIDLEY-THOMAS: Well, I'm pleased that
27 she's been skilled enough to cause the board, and more specific
28 than that, the staff of the Board of Chiropractic Examiners to

1 realize that there's value to be appreciated in taking advantage
2 of the services and the skill that's offered through her
3 agency.

4 And there's specific areas in which there was
5 resistance before. Now there seems to be much more
6 collaboration.

7 And so, the representations made by the Executive
8 Director of the Board can be confirmed by the nominee by virtue
9 of the fact that before, there was a dismissive disposition.
10 Now there is a sense in which they recognize if they are to
11 achieve their primary objective, namely consumer protection, not
12 at the expense of the profession but indeed primary concern,
13 consumer protection, it is best achieved by understanding the
14 uniform standards that apply to all boards, rather than being an
15 outlier.

16 So, I'm rather impressed with the gentle yet firm
17 coaxing on the part of the nominee to bring that board and its
18 staff to closer collaboration and uniformity of standards.

19 SENATOR ASHBURN: Thank you.

20 CHAIRMAN PERATA: Thank you, Senator.

21 SENATOR RIDLEY-THOMAS: Thank you.

22 CHAIRMAN PERATA: You're more than welcome to
23 stay for the afternoon. I know you don't have much to do these
24 days.

25 [Laughter.]

26 SENATOR RIDLEY-THOMAS: Obviously not.

27 CHAIRMAN PERATA: You may continue.

28 MS. LOPEZ: Thank you so much.

1 Just to add to the flavor of where we're at, the
2 Department is in a unique position in all of its efforts to
3 really promote the high level of public trust that we currently
4 enjoy. Consumer Affairs, when you put that name out there, the
5 folks have a sense that, you know, that's a good part of
6 government.

7 And our efforts have been to expound upon that
8 effort, whether it be under our current regulations for when we
9 monitor and work with 38 regulatory entities. And the
10 professions they represent range from all of the medical field,
11 from doctors, nurses, all the way to cosmetologists, auto
12 repair, funeral homes. We cover a huge gamut, a tremendous
13 number of issues that impact the daily lives of Californians
14 everywhere. So, it's a mission we take seriously, and it's a
15 mission of consumer protection and empowerment that binds us all
16 together.

17 But given our -- given the well-run operation
18 that the Department enjoys currently, we are able to be a
19 resource on what I call the super consumer issues. That's being
20 able to participate in connecting consumers to good, correct
21 information when it comes to everything from rebuilding their
22 life after a fire or emergency, as we experienced during the
23 fall, all the way to right now, the ongoing challenge of keeping
24 families in their homes during the mortgage foreclosures crisis.

25 So, I'm very proud of the Department that I
26 serve, and I do not serve alone. There are many good people
27 behind me, literally behind me here, doing the day-to-day good
28 work.

1 CHAIRMAN PERATA: Smart people.

2 [Laughter.]

3 MS. LOPEZ: And I'm just real proud and happy to
4 be in this position. And I ask for your support in continuing
5 my job.

6 CHAIRMAN PERATA: Do you have any family here?

7 MS. LOPEZ: I sure do. I have my daughter here,
8 Christina, and her father, Raul. My parents are here.

9 Stand up, sweetie. She's taller than me.

10 [Laughter.]

11 MS. LOPEZ: And there's a lot of people in the
12 room seeing her grow up, starting with this building.

13 My mom and dad, Linda and George Lopez. My Aunt
14 Gloria. My sister Terry, and my niece and nephew there. My
15 sister Mary and her brood. My brother Michael. We say they
16 have all the blond children in our family. And there's
17 Jonathan.

18 And I've got a lot of family friends who are in
19 the audience.

20 CHAIRMAN PERATA: Would the other three people
21 who aren't in the family --

22 [Laughter.]

23 MS. LOPEZ: This is just a small portion. We are
24 a California-wide family, so this is the contingent that could
25 make it today. So, it's partly a civics lesson. They got to
26 skip school, so let's make it good.

27 CHAIRMAN PERATA: This will be a lesson. Thank
28 you.

1 Any questions, Gilbert?

2 SENATOR RIDLEY-THOMAS: Mr. Chairman, just more
3 specific to Senator Ashburn's question, particularly in the area
4 of legal services and personnel, that they made some advances
5 over the last year, taking advantage of the Department's
6 oversight in that area. And you know, that was some of the
7 biggest difficulty and challenges this particular board was
8 experiencing.

9 So, through a rather skilled and careful set of
10 overtures and negotiations, I think the nominee has done a
11 commendable job.

12 I wanted to be a bit more specific about the
13 areas in which progress has been made.

14 Let it be known that there's a lot more that
15 needs to be made, but I think we're in good hands, and she's
16 prepared to be responsive not only to the administration but, as
17 evidenced, the Legislature as well.

18 CHAIRMAN PERATA: Senator Padilla.

19 SENATOR PADILLA: Thank you.

20 Hi, Carrie. I have just a couple questions
21 following up on our conversation the other day in my office,
22 beginning with the Medical Board and the status and future of
23 diversion in California.

24 Why don't you sort of give us an overview of
25 what's been going on recently, and then I'll pick up from there
26 with some questions?

27 MS. LOPEZ: Yes. Diversion represents the effort
28 by which any of our boards, and there's multiple boards that

1 have current practice in -- in handling a professional who's
2 going through any type of rehabilitation, what that means to
3 their investigation of any action that they may be questioning
4 their license, but also in the period of reentry into the
5 profession if their license was suspended for -- for any reason.

6 So, diversion means many different things to
7 different bodies. So I like to refer to it as the -- the effort
8 around managing rehabilitation and reentry into the profession.

9 And what I've committed to, and Senator
10 Ridley-Thomas' hearing pulled together all of the minds around
11 this issue, is that we need a department-wide policy on that
12 very effort so that there is clear criteria or common standards
13 for any of our boards who engage in this. It's very important
14 that -- and I would expand it beyond the current boards that are
15 currently involved -- but it's important that we have a good set
16 of standards as to what that means, how we're going to handle a
17 situation, and to face it head-on, versus the fact that it's not
18 going to exist. There will always be a need for rehabilitation
19 and reentry into the profession. What's going to be fair to the
20 professional involved, and more importantly in many cases, how
21 do we adhere to our consumer protection mission through the
22 entire process.

23 So, I think what has gotten everybody concerned,
24 including myself, is that we have one board, the Medical Board,
25 who's transitioning from what they currently do, their
26 diversion, to something else. And that program is sunsetting --
27 or not sunsetting -- is ending at the end of June, and they will
28 be transitioning -- they need a transition to something else to

1 monitor and, again, manage the issue of reentry.

2 SENATOR PADILLA: I don't want to underestimate
3 or not appreciate how sensitive and complex this could be, given
4 rights and deference we should give to medical professionals in
5 the state versus the rights and respect we need to provide for
6 patients and other consumers in this state.

7 So, we know what we have in place is coming to an
8 end in June. How far along are we in determining what will take
9 its place come July? What's the status of doing our homework,
10 fleshing out the framework of a new program?

11 MS. LOPEZ: What they propose to stop doing is
12 actually doing the full monitoring that they had done before.
13 The Medical Board set up their program first, so everybody had
14 the benefit of establishing their operation after that. So, the
15 bulk of our boards now contract out services that the Medical
16 Board will now be able to consider.

17 This is not just good policy that the Department
18 needs to pursue because it's an important issue, we need to
19 pursue it because we are the holder of the biggest contract that
20 the bulk of the boards have a piece of, and that's with a vendor
21 who actually does all of the monitoring, and so forth. So,
22 that's coming up for renewal. That RFP is out. We anticipate
23 it being ready for implementation July 1.

24 And as part of that package, then we would be
25 wanting each of those boards -- and it's again a process by
26 which they all have to buy into it. All of these entities are
27 semi-autonomous. Just because I say so doesn't make it so --
28 but that way, we have a set of policies, the criteria or

1 standards by which to evaluate the success of such a program,
2 and whether the vendor and whether the boards are meeting those
3 standards.

4 So, that's what we anticipate to start in July,
5 and that would be the appropriate time, if it continues to be
6 the same vendor, that other boards can come into play, and that
7 we would be able to audit the success.

8 SENATOR PADILLA: Are there models of similar
9 programs for other professions?

10 MS. LOPEZ: Absolutely. Within our own
11 Department, there are models, everything from -- and one of the
12 key issues, you know, surrounding the consumer protection is
13 what is held in confidential protection for the licensee at any
14 given time. So, we have several models by which practitioners
15 can opt into confidentiality if they halt practice, you know.
16 And then again, it centers around the context of that
17 profession. We want to make sure that that stays in place.

18 So, there's models within our own Department.
19 There's models within the state. The State Bar runs efforts.
20 We have -- and then there's models throughout the country. And
21 so we've -- again, with the help of the Senator, we've been able
22 to surface a lot of good information. It's brought a very
23 important issue to light that we hope -- we hope to add value
24 to.

25 SENATOR PADILLA: Just in closing on this point,
26 and I'll want to talk a little bit about the foreclosure
27 situation, too, I just want to share with our colleagues here on
28 the Committee that in the agency comment section of the State

1 Auditor's Report, which was released last June, less than a year
2 ago, that the agency, the State and Consumer Affairs Agency,
3 agrees with the audit recommendations and states that it has
4 directed the Department of Consumer Affairs, and here you are,
5 to follow through with the Medical Board to ensure
6 implementation of the Auditor's Report recommendations.

7 So, at the agency level, clearly your office is
8 critical to the proper oversight and implementation of the
9 program. And it's clear that not only do they see you as
10 critical in its implementation, but you're specifically being
11 charged with this task.

12 So, I encourage you to seize that mandate. And
13 when you said they're sort of semi-autonomous, and what you ask,
14 it doesn't always feel that way, it looks to be pretty black and
15 white to me.

16 MS. LOPEZ: The mandate helps.

17 SENATOR PADILLA: We're looking forward to your
18 leadership there.

19 MS. LOPEZ: Thank you, Senator.

20 SENATOR PADILLA: The other subject I wanted to
21 raise is this issue of foreclosures, and you touched upon it
22 with Senator Ashburn. We discussed it in my committee.

23 Can you share with us again, we're charged with
24 doing this, but we don't have authority or jurisdiction given
25 the Department of Real Estate and other entities in the state
26 family?

27 MS. LOPEZ: Yes. Unfortunately, this -- this
28 crisis has brought about a lot of uncertainty in many quarters.

1 It's also brought about an opportunity to collaborate on a whole
2 new level that we haven't done, at least in our recent history.
3 This collaboration represents between the agency -- this
4 department's part of State and Consumer Services -- and
5 Business, Transportation and Housing.

6 The Governor pulled us all together and said --
7 and this is back in May -- this problem is coming up, and it's
8 only going to get worse. We need to do something about it.
9 There's very little we control, but there's very -- there's very
10 much added value we can have. We can make a huge difference in
11 keeping as many families in their homes as possible.

12 So, that was the impetus, and we have been making
13 up things along the way as to what is going to be the best
14 information, who are best resources, what is the best way to get
15 out the information.

16 Our role is to help in framing things for
17 consumers, because we do that all the time. Business,
18 Transportation and Housing provides a lot of expert information
19 in terms of because they regulate all of that industry, from the
20 mortgage side to the real estate side, they're a critical piece
21 of what we would be able to present to Californians throughout
22 the last eleven months and continuing for another year or two.

23 So, the collaboration has worked. And we
24 consider ourselves -- our greatest contribution is really
25 facilitators. There's people here today, there's people all
26 over the state, who represent the best partners, you know, from
27 the counselling side, to the lender side, and the advocates, you
28 know, that we all had to come together to make sure that

1 consumers were connected with correct information to remedy a
2 potentially harmful situation in which they will lose their
3 home. And we've facilitated --

4 [Baby crying in audience.]

5 CHAIRMAN PERATA: Don't worry, it's just like the
6 caucus.

7 [Laughter.]

8 MS. LOPEZ: So, at the end of the day, we will
9 continue the effort to both provide information 24/7 via web
10 site and toll-free numbers, and so forth, but also to do the in
11 person outreach through the workshops and townhalls, to
12 encourage other Members of the Legislature to host something in
13 their territories to make sure that consumers have the
14 opportunity and the confidence to -- to manage what they're
15 going through, and that we're real proud of.

16 SENATOR PADILLA: One of these workshops which we
17 held in my district just a couple of weeks ago, so I appreciate
18 you being there.

19 Did you ever circle back with the Citibank
20 person, who wasn't exactly helpful that day?

21 MS. LOPEZ: We'll have to do that.

22 SENATOR PADILLA: I'll follow up on that one.

23 MS. LOPEZ: Okay.

24 SENATOR PADILLA: Let's talk a little bit short
25 term and little bit longer term.

26 On this issue in the shorter term, you say you're
27 facilitating, you're providing support and assistance because at
28 this point it's more within BT&H than in your branch within the

1 administration.

2 MS. LOPEZ: Some of the policy remedies, yes,
3 they rest with them.

4 SENATOR PADILLA: So, what recommendations have
5 you formally or informally passed along to them, given your
6 shop's expertise in handling issues more from a consumer
7 education and consumer protection standpoint?

8 MS. LOPEZ: I think one of the biggest things you
9 learn, especially, you know, even though I've been a fan of
10 public process and worked around government, is that, you know,
11 folks outside of our institutions don't really get how we're
12 organized, and they shouldn't have to care about it.

13 So, when they need help, they need information,
14 or they need to report a potential problem or a scam, they
15 shouldn't have to figure out how we're organized and able to do
16 that.

17 So, one of the things we've been able to coalesce
18 around and try to, you know, keep improving is that a consumer
19 can call one number, or visit one web site, and be able to be
20 directed to where they need. Sometimes they need a live body
21 answering the phone to say, "I've got this problem." And if the
22 answer is, "You get to fill out one complaint form," or "You've
23 got to fill out three," at least they can be walked through it.

24 But the user-friendliness of our resources to
25 consumers is one of the best pieces of advice that we can pass
26 on, and that would help.

27 Outside of that, you know, the policy as to who
28 should be regulated more, and what-not, I'll leave that to your

1 good graces to figure out.

2 But mainly I've been focused on how to -- when a
3 consumer has the wherewithal to finally reach out to remedy
4 their situation, are we going to douse them by having to go
5 through our map of bureaucracy, or are we going to be there,
6 ready to say we're here, versus we're here to confuse you.

7 SENATOR PADILLA: Given that structure of
8 confusion, if you will, are there any sort of longer term
9 recommendations that you're exploring about how to restructure
10 who's responsible for what from a consumer advocacy standpoint,
11 to a regulatory standpoint, and everything in between? How can
12 we --

13 MS. LOPEZ: We're working on it, you know.

14 SENATOR PADILLA: -- make it easier for people to
15 interface?

16 MS. LOPEZ: Yeah. I'm hoping that something
17 long-term comes out of it. I'm hoping it's not a result of this
18 long-term problem, or that that keeps going on.

19 But it gives us an opportunity to, like with the
20 public outreach campaign, to actually collaborate in a real way,
21 where one entity's resources are being shared with another. And
22 I'm real excited about that, because I know that doesn't happen
23 very often. And given that building of a relationship between
24 our various agencies that we can build on that more.

25 So, if there's something they want to institute
26 to relate to consumers that much more readily, we'll be happy to
27 help them set that up. If it's something that, you know,
28 services or resources they want to contract with us for, we'll

1 be available.

2 SENATOR PADILLA: Thank you.

3 CHAIRMAN PERATA: I'd like to ask about the
4 private postsecondary education. It's been not quite a year
5 since the bureau sunsetted, and I have a bill that the schools
6 that should be regulated have been critical of, and then the
7 consumer advocates are critical of the Governor's bill, which
8 they feel really in fact exempts some schools, and it goes too
9 far in the other areas.

10 What's your disposition on this? Where are you
11 located in this power struggle?

12 MS. LOPEZ: I'm rooting for a bureau to come
13 back. Virtually the entire time I've been at the Department, we
14 have not had a bureau.

15 That has not subsided our commitment to ensure
16 the protections of students is still carried out. With the
17 legislation also passed last year, we were able to implement
18 agreements with the current licensees, voluntary as they were,
19 they're still in place, and virtually all of them signed off.

20 And we have met with them throughout the state.
21 It was a tremendous outreach effort, and met with tremendous
22 success and appreciation, that they understand what was going
23 on, what was expected of them during this period that the bureau
24 is not in establishment, what we expected as to the continuation
25 of student rights in terms of having an enrollment agreement,
26 understanding what the financial obligations were of the
27 schools, everything that was still available to them.

28 We've also accomplished during this time the

1 reimbursement of over \$4 million on student claims.

2 So, I've been very proud of what we've been able
3 to accomplish without a bureau, but we need a bureau back in
4 place for many reasons, but the biggest one on my mind right now
5 is the fact that the programs that students are enrolled in
6 right now to qualify for licensure in another area of our
7 department won't follow through, can't follow through if the
8 school they're attending is not approved.

9 So, we're in an urgent situation as far as I'm
10 concerned. I want a bureau back in place that has a statute
11 that's reflective of something clear, that's looking out both
12 for the integrity of the profession and the protection of the
13 student consumer, but something I can enforce. Bottom line, I
14 need something to enforce that will build on what was the best
15 promise of what had existed before.

16 So, I just want something back.

17 CHAIRMAN PERATA: Okay.

18 We'll ask for brief comments from people who are
19 here to support.

20 I'd just say if there's anybody here opposing
21 her, I would leave. There's too much family here, too many
22 friends.

23 [Laughter.]

24 MR. CONRAN: I'm not part of Carrie's family, but
25 I am part of her fan club.

26 My name is Jim Conran. I'm President of
27 Consumers First and former Director of the Department of
28 Consumer Affairs.

1 I did not know Carrie before she came, other than
2 by reputation through the Coro Foundation, but I've become a
3 huge fan of hers and working with her since she was appointed by
4 the Governor.

5 She's been very accessible to any consumer group
6 that needs to meet with her or wants to meet with her. She
7 makes herself available. She goes to them, and she's interested
8 in learning what other people want out of her agency, to make
9 the agency as effective as possible in serving the public
10 interest.

11 And as you Members of the Senate well know, this
12 Department impacts consumers from cradle to grave, from doctors
13 delivering babies, to people working in cemeteries, and
14 everything in between.

15 And the word "consumer" is not put lightly in
16 that agency, because it is the one place that the public has to
17 have confidence they can go to and get redress for issues where
18 they're abused in the marketplace. And Carrie has strongly
19 stood up for protecting the consumers, making sure that they can
20 be as inclusive in the process as possible.

21 And I'm very enthusiastic about her
22 administration so far. I hope, and by the comments made by the
23 Rule Committee Chairman, that you'll progress with an
24 affirmative vote for her and urge your colleagues on the Floor
25 to do so as well.

26 So, thank you.

27 CHAIRMAN PERATA: Thank you.

28 MR. HOWARD: Good morning, Mr. Chairman and

1 Members. Ed Howard, Senior Counsel for the Center for Public
2 Interest Law.

3 Since 1980, the Center's been monitoring the
4 Department of Consumer Affairs, its boards and commissions, to
5 try and protect consumers. And we would also add our support
6 and urge you to vote yes on the confirmation of Ms. Lopez for
7 many of the reasons Mr. Conran stated.

8 We've also, in the brief tenure that she's been
9 acting Director, have had an enormously constructive
10 relationship with her. She's been very open to listening to our
11 suggestions on some extraordinarily important issues, like the
12 Board of Accountancy, the diversion program, and some of the
13 other issues that have been discussed here today.

14 So, we would also add our support. Thank you.

15 CHAIRMAN PERATA: Thank you.

16 MR. AYALA: Mr. Chairman and Members of the
17 Committee, my name is Joel Ayala. I'm the CEO for the
18 California Hispanic Chambers of Commerce.

19 I had some canned remarks, but you pretty much
20 hit on everything that I wanted to talk about, especially with
21 Senator Padilla.

22 All the outreach, all the workshops, all the
23 things that are put into place, the regulations, don't go into
24 effect unless you have the participation of those other business
25 organizations, like the CSBA that was just up here, the Black
26 Chamber, the California Hispanic Chamber, the Asian Chambers,
27 and what-have you. If you don't have those participants
28 involved, none of this really matters.

So, I just want to say that Carrie Lopez has been the most accessible, in fact, the only head of the DCA that I've ever known, and I've been in this business ten years. So, the fact that we know who it is, there's been outreach, and there's been -- we've been engaged to participate, that shows -- that lends to her credibility also.

I just encourage your support. Thank you.

CHAIRMAN PERATA: Thank you.

MR. SCHACHT: Good afternoon. My name is Steve Schacht, Mr. Chairman. I come in support of Ms. Lopez this afternoon from the Cemeteries and Funeral Directors of the State of California. Of course, the bureau comes under her direction.

I just want to state, from day one she demonstrated the open-door policy, her concern for the consumer, and the concern to work with the industry which, working together, works and is a benefit to the consumer. She demonstrates her support of her bureau chiefs, and we just appreciate what we've seen in the past few months and strongly support her.

Thank you.

CHAIRMAN PERATA: Thank you.

MS. OPPERMAN: Hello. My name is Melinda Opperman. I'm the Vice President for Community Outreach for Springboard.

And some of you may know of Springboard as it pertains to the Hope Hotline. We're on the 888-995 Hope Hotline. We were one of the three original founding agencies of the Hope Hotline in 2002. It's grown to 10 large agencies now.

1 There's 450 counsellors sponsoring the hotline and helping
2 California citizens stay in their homes and avoiding
3 foreclosure.

4 And I'm here on behalf of my employer because we
5 support all of Carrie Lopez's great leadership and work.
6 Outreach in the community has been outstanding. We have had
7 overwhelming success at the workshops that your fine gentleman
8 here had mentioned in the communities. It has been great. So,
9 we appreciate everything you've done.

10 Thank you.

11 CHAIRMAN PERATA: Thank you.

12 MR. PATTERSON: Hello. My name's Luke Patterson.
13 I'm here on behalf of the California Association of Licensed
14 Investigators, CALI.

15 I would just like to say that during your tenure,
16 you've demonstrated the preparedness and the tenacity, and also
17 the deftness to accomplish things, and we would like to see you
18 continue in that position.

19 Thank you.

20 CHAIRMAN PERATA: Thank you.

21 MS. JOHNSTON: Good afternoon. Barb Johnston,
22 Executive Director of the Medical Board.

23 I wanted to come personally to support Carrie. I
24 think we're the board that keeps throwing the most difficult,
25 complicated and challenging issues to her, and at the same time
26 crying out for public protection, which -- that is what she's
27 known for.

28 And it's an honor. We are humbled to be working

1 with her.

2 CHAIRMAN PERATA: Thank you.

3 Anything further? Any opposition?

4 Well, I want to, before we pass judgement here,
5 just encourage you to bear down on whatever you can on the
6 Chiropractic Board. It's kind of been an open sore, and every
7 time I see it, I cringe. Whatever can be done, I would
8 encourage you to do. It's certainly one where you will have
9 forgotten more than most of us will know about it, so we really
10 depend on you.

11 On the schools issue, your predecessor was quite
12 clear in her confirmation that she was going to take care of
13 things, and nothing much changed. It is a big issue. I think,
14 as you said, you're balancing objectives there, but in the final
15 analysis, if you have to come down on one side or the other,
16 come down on the part of the students.

17 . If you are an insomniac, and you watch late-night
18 cable, you'll see the commercials on for a lot of private
19 schools. Unsuspecting, those who are trying to get back into
20 the workforce are easily ripped off by people. Obviously, it's
21 not all of them, but there's enough that it's a very unfortunate
22 situation.

23 So, I would hope you'll take it a step further
24 and let us know. The Governor's got a softer approach than I
25 prefer. We're confirming you, and you work for him, so I
26 understand there's a little in balance here between my voice of
27 persuasion and his office. But this is something that should be
28 done in common and collectively to make sure a bad situation

1 gets better quickly. It's been almost a year.

2 With that, do we have a motion to approve.

3 SENATOR ASHBURN: I'll make the motion.

4 CHAIRMAN PERATA: Call the roll, please.

5 SECRETARY WEBB: Cedillo.

6 SENATOR CEDILLO: Aye.

7 SECRETARY WEBB: Cedillo Aye. Padilla.

8 SENATOR PADILLA: Aye.

9 SECRETARY WEBB: Padilla Aye. Ashburn.

10 SENATOR ASHBURN: Aye.

11 SECRETARY WEBB: Ashburn Aye. Perata.

12 CHAIRMAN PERATA: Aye.

13 SECRETARY WEBB: Perata Aye. Four to zero.

14 CHAIRMAN PERATA: Four-zero, congratulations.

15 MS. LOPEZ: Thank you.

16 CHAIRMAN PERATA: Our next appointee up for
17 confirmation is Darcel Woods, who is a member of the Board of
18 Parole Hearings.

19 Welcome.

20 MS. WOODS: Thank you.

21 Good afternoon, Senators. My name is Darcel
22 Woods. I'm honored to be seated here before you today.

23 I do have family with me. I have my brother,
24 Ted, in the back. I have my sister, Deanna, and I have my
25 cousin, Shirley, with me for support, as well as a host of
26 friends and other well-wishers.

27 Let me start by saying that I am a lifetime
28 resident of Los Angeles County. Over 12 years I served in

1 various capacities within the criminal justice system. First
2 with the Los Angeles County Sheriff's Department, the Orange
3 County Probation Department, and with the -- at the California
4 Youth Authority, specifically as a high school teacher, as a
5 youth counsellor, and as a parole agent working the areas of
6 Orange County, Los Angeles County, as well as San Bernardino and
7 Riverside County.

8 I'd like to say that that body of work does not
9 define who I am, but it is a part of who I am. Those
10 experiences helped me to understand the gaps inherent in the
11 system and gained insight on, number one, how to better prepare
12 our future workforce; and number two, how to develop meaningful
13 programs at the institutional and community-based level in
14 rehabilitation and assimilation purposes.

15 I've done casework and treatment plans. I've
16 developed and taught pre-parole classes. I have wholeheartedly
17 embraced the integration aspect of parole and volunteer in my
18 community.

19 I do believe in redemption and restoration as
20 evidenced by my leadership on a variety of community
21 collaboratives, with my work with the Regional Occupational
22 Program in Clairmont, California. One such program is the
23 Success Project, which was a reintegration program that both was
24 recognized at the state and national levels for its programmatic
25 excellence. It served hundreds of wards within the Youth
26 Authority, their families, their significant others, at the
27 Heman G. Stark Youth Correctional Facility, as well as two
28 parole offices, and two group homes for approximately seven

1 years.

2 It was funded through the state's Department of
3 Health Services, the Community Challenge Grants. It provided a
4 myriad of continuum care services to those wards, their
5 families, and significant others.

6 Another project, which was the Career Development
7 Club in the Chino City, helped to assist displaced workers,
8 CalWorks recipients, as well as stay-at-home moms entering into
9 the workforce for the very first time.

10 I have served as a member of the San Bernardino
11 County Workforce Investment Board for ten years on the Youth
12 Council.

13 I am most proud of my 16 years as a community
14 college professor at Mount San Antonio College and Chaffey
15 College, facilitating the learning process to students involved
16 in the correctional science and criminal justice field, how to
17 prepare nurses, social workers, doctors, lawyers, peace
18 officers, teachers, and psychologists. That work has been very
19 rewarding for me.

20 Introducing and discussing the five correctional
21 philosophies, which I characterize as RRRID -- rehabilitation,
22 reintegration, restoration, and incapacitation and deterrence --
23 with my students is what I miss most about the collegial
24 environment.

25 I believe that every twist and turn along the way
26 in my career has brought me to this level of leadership. I feel
27 very prepared what I am -- what I was appointed to actually do.
28 It has been my honor to serve as a public official in this

1 capacity for the people of California for the past 12 months,
2 and I thank you for this opportunity.

3 CHAIRMAN PERATA: Thank you.

4 Any questions, Gilbert? Alex?

5 SENATOR PADILLA: Good afternoon.

6 MS. WOODS: Good afternoon.

7 SENATOR PADILLA: The only specific question, and
8 it's a significant one, or concern that I want to raise, is in
9 the materials in preparation for this hearing. We've heard from
10 a number of individuals, including one USC Gould School of Law
11 Supervising Attorney, Michael Brennan, sharing concerns about
12 the fairness and not of your personal integrity, but the
13 integrity of the process by which you conduct these hearings.

14 It's pretty clear that someone in your capacity,
15 when you're judging parole is supposed to be looking primarily
16 if not exclusively on what an individual has done since their
17 time of incarceration to rehabilitate themselves and prepare
18 themselves for exit from the Corrections system.

19 It's our understanding that it's supposed to be
20 made abundantly clear at the beginning of these proceedings that
21 it is not your role to retry, if you will, the original
22 incidents that landed this person into custody. So, that's a
23 concern that's been outlined, that on a number of occasions you
24 have done exactly that.

25 I'd like to afford you an opportunity to address
26 that specific concern and complaint about your appointment.

27 MS. WOODS: In regards to that letter, I was
28 actually surprised to have received a letter from the USC Law

1 School, in particular Mr. Brennan, who I just had cases with two
2 weeks ago at the California Institution for Women.

3 As you say, at the onset of every hearing I
4 actually read into the record the hearing procedures and inmate
5 rights, and that is part of the record.

6 We are not there to retry the case, nor do I try
7 and retry the case because the facts are there.

8 If anything, during question and answer I may ask
9 pointed questions if, in fact, the inmate is even discussing the
10 crime. I may ask pointed questions for clarification so that I
11 understand where that person was at that time, and some of those
12 underlying causative factors, have those been addressed in the
13 rehabilitation process?

14 So, I've not retried any cases. Again, I'm very
15 surprised because I always give an atmosphere, or allow an
16 atmosphere of nonadversarial, so that if there are any
17 objections, I address those immediately. And before every
18 hearing, I usually talk with defense counsel as well as with the
19 DA to find out if there are any concerns.

20 So, I was shocked.

21 SENATOR PADILLA: I appreciate your response. As
22 part of our materials, we have been provided transcripts of some
23 of these hearings which suggest differently upon my review of
24 them.

25 So, I just want to go on record here expressing
26 that concern and reservation.

27 MS. WOODS: Thank you.

28 CHAIRMAN PERATA: I believe, first of all, there

1 are probably some who are here who are surprised that after some
2 pronouncement I made not too long ago about having too many
3 people in one profession and not enough in the rest of the
4 professions on the Parole Board, that I wasn't inclined to do
5 any more hearings.

6 But it did occur to me that I would then guilty
7 of the very concerns I've had with a number of Parole Board
8 members, yourself included. So, everybody deserves their
9 day, and that's why you're here today.

10 Some people have called and said, "I thought we
11 weren't going to do that any more." Well, I changed my mind.

12 The question really comes down to two issues.
13 One, and this goes to your written responses, that when asked
14 what you hope to accomplish, and here I quote,

15 "To discern, via the factors of
16 suitability set by Title 15, who
17 of the inmates seated before me
18 are rehabilitated and pose no
19 further threat to the citizens of
20 California."

21 End quote.

22 And that does not appear to me to be a standard.
23 The people that I know who are no longer a threat are dead.

24 And so, I was a little taken aback by that
25 because you have said earlier that you believe in redemption,
26 but it seems to me the only way out for redemption is to die.

27 Then I think Senator Padilla made reference to
28 some of the transcripts that were read, where the reasons given

1 did not seem to substantiate what had happened during the time
2 people had been in rehabilitation or been in prison.

3 So, how do you determine that, when somebody's no
4 longer a threat?

5 MS. WOODS: Well, I have a series of factors that
6 I'm supposed to go by, by law. First and foremost, we have to
7 make sure that we are examining the commitment offense and the
8 nature of that. Their previous criminal and social history
9 becomes a factor, as well as and not solely their institutional
10 behavior, their programing and disciplinary.

11 There's the psychological evaluations, the
12 results of that.

13 There's a solid need for parole plans, and their
14 honesty and self-accountability also goes a long way.

15 So, I'm looking at a variety of factors for
16 suitability, and not just their programing, because as has been
17 said, I'm sure, by other commissioners, that there are
18 facilities that offer more programs than some. And if I'm being
19 objective, and I'm looking at it across the board, not looking
20 at gender, not looking at anything along those lines,
21 historically more programs are offered for women than they are
22 for men.

23 But if I'm looking at it objectively, I have to
24 make sure that I'm looking at not just numbers of programs, but
25 the quality of those programs. Did the person take programs
26 that were meaningful as to their rehabilitation, as to those
27 underlying causative factors that would allow me to assess
28 through questioning: Is this person truly internalizing the

1 skills that they've learned, or is it just another certificate
2 of achievement that they've gone and had someone sign off?

3 Having worked inside of the facilities, I know
4 how easy it is for people to attend a session and have it signed
5 off. So, I ask probative questions to find out whether or not
6 this person has internalized this information, how are they
7 utilizing it now, how will they plan on utilizing it when they
8 return to the community.

9 CHAIRMAN PERATA: That's a pretty damning comment
10 on the system, but I'm glad you said it because it certainly
11 corresponds with my view of the Department of Corrections, is
12 that the rehabilitation side is given scant.

13 But it is a little ironic that we ask people to
14 perfect themselves while in prison, yet you're saying that it's
15 so easy to get a pass on this stuff, that I don't put much
16 weight on a certificate. That's really troubling.

17 But here's the most difficult part I have. In
18 Title 15, I quote.

19 "A life prisoner shall be found
20 unsuitable and denied parole if
21 in the judgment of the panel
22 the prisoner will pose an
23 unreasonable risk of danger to
24 society if released."

25 So, there's a contradiction here in what you've
26 written, where you say "no further threat," which is more of an
27 absolute statement, as opposed to "unreasonable."

28 MS. WOODS: I think it's more of a semantics. I

1 understand that it a reasonable threat, so I believe it's more
2 of just semantics.

3 CHAIRMAN PERATA: All right.

4 There is also somewhere in here that I read where
5 you had talked about looking at the evidence in front of you, as
6 opposed to the things of the past. I think you have may have
7 given me the answer previously.

8 But if there's no continuum, you know, I had a
9 release date before, or I was given a one-year, and I've done
10 the following things.

11 But if that is not accounted for at the hearing
12 itself, then it seems to me the only evidence you have is the
13 crime itself, and there's been no mitigation allowed for during
14 the time the crime was committed, incarceration began, and time
15 they come before you.

16 Did I misread that or misinfer that?

17 MS. WOODS: I'm not for certain, but it sounds
18 like what you're saying is that we're not weighing, or I haven't
19 been weighing all of the factors, other than what happened prior
20 to?

21 CHAIRMAN PERATA: Yes, the idea that somehow what
22 came before, the past doesn't count. That's not a salient
23 factor in the determination that you're making.

24 Maybe I misread that?

25 MS. WOODS: No, the past is one of our factors.
26 The social history.

27 For instance, if a person had a significant
28 substance abuse, poly substance abuse history, that comes into

1 play. How have they addressed that since they've been there?
2 They say that they've been in AA or NA for the last, you know,
3 they've been there for 15 years, and for the last 12, they've
4 been involved in that, but they can't tell me the twelve steps.

5 So, there are different ways of actually
6 evaluating that.

7 Yes, the past comes in as a factor, but so does
8 what they've been doing since they've been there. So, I try and
9 equally weigh all those things.

10 CHAIRMAN PERATA: I don't mean to be glib here,
11 but I used to teach religion, and sometimes I can't remember the
12 Ten Commandments in correct order, so I don't know how I'd do
13 with twelve of them.

14 MS. WOODS: There are some inmates that can
15 recite them all and tell you how they're going to actually
16 implement them into their life.

17 CHAIRMAN PERATA: By the way, I should have
18 mentioned earlier, Senator Dutton has an illness in the family,
19 which is the only reason he's not here today.

20 Those who are here in support of the appointee,
21 please come forward.

22 Mr. Allen, you're looking splendid in retirement.

23 MR. ALLEN: I'm actually working again on a part-
24 time basis.

25 Senator, thank you for allowing me to come
26 forward on Darcel's behalf. I have a statement that I want to
27 read, because if I don't read it, I'm going to forget some
28 important item.

1 CHAIRMAN PERATA: Go right ahead.

2 MR. ALLEN: I'd like to thank the Chairman and
3 the Committee for allowing me to speak on Darcel's behalf.

4 As some of you may know, I recently retired after
5 31 years. I was Assistant Chief for the Department of Justice,
6 Bureau of Narcotic Enforcement, and my last few years was with
7 Governor Schwarzenegger as the Director of the former California
8 Youth Authority, and most recently, Assistant Secretary of the
9 new Office of Correctional Safety for CDCR.

10 I retired because I had a family illness.
11 Otherwise, you'd still be bothering with me.

12 But the only other thing I'm doing right now, I'm
13 serving as the Mayor Pro Tem for the City of Covina. And I'm
14 working part-time for the board as a deputy commissioner in
15 Southern California, and also teaching for the Department of
16 justice.

17 I'm deeply honored to be here, because I was here
18 not too long ago when I went through the confirmation process
19 with your help.

20 This afternoon, however, I'm here on behalf of a
21 good friend and colleague of mine, Darcel Woods, who's being
22 considered for the commissionship for the board. And I just
23 want to make a few supportive comments to the Committee about
24 Darcel, who's been in the criminal justice system, and a
25 professional in the system, and an educator in the system for
26 several years, and a person that I'm supportive of.

27 She's fully capable of fulfilling the job. In
28 regards to Darcel's background, professional background, she's

1 been in a law enforcement environment in one capacity or
2 another, as she mentioned, for the past several years. And
3 she's excelled in every job and every position she's ever
4 encountered.

5 While working as a special agent many years ago
6 for the Department of Justice, I actually lectured to her when
7 she was a student at one of the criminal justice courses at Mt.
8 SAC College in Walnut, California. And then, about four years
9 later, I tried to recruit her as a special agent. We were doing
10 minority recruitment, and we were looking for qualified
11 minorities, and she fit the bill.

12 However, she ignored my request and went to the
13 California Youth Authority instead as a teacher. Then, down the
14 road, I would run into her again, and this time she called me to
15 ask me to be a lecturer at her class at Mt. SAC, because she's
16 teaching there as a professor.

17 I'm here today because I have a vested interest
18 in Darcel for this job, because it was me, in 2004, that asked
19 her and convinced her to leave her professorship at Chaffey
20 College in San Bernardino County to take on this job. I thought
21 she could do it. I still think she can do this job in the way
22 that everyone expects her to do it.

23 The other thing I want to mention is that I
24 personally observed her commitment to the criminal justice
25 environment, her work with the minority community, because when
26 she was a professor, she worked with a lots of minority students
27 at Mt. SAC and Chaffey College, working with them to get a
28 career in the criminal justice environment.

1 You know, most of us are locked up in California,
2 and she was making an effort to get a lot of minorities into the
3 law enforcement and criminal justice environment.

4 There's no doubt she has the expertise to carry
5 out the job. And aside from her compassion for educating and
6 mentoring young people, she's always been a person that I know
7 of that had an even hand with everything that she did, and who
8 truly believes that everyone should be treated fairly and
9 impartially. That goes for those students that she taught as
10 well.

11 I believe that one of the primary roles of a
12 commissioner is to strike a balance between the gravity of a
13 life crime offense, the inmate's due process rights, and of
14 course public safety.

15 Unfortunately, it's a role that routinely places
16 a commissioner in a no-win situation because no matter what
17 decision is made at the hearing, someone, some group, perhaps an
18 attorney, a family member or an organization is not going to be
19 happy with the decision.

20 The Darcel Woods that I've known for more than
21 two decades has always been a person of tremendous character and
22 honesty, and someone who will never, ever compromise her own
23 independent reasoning, good judgment, or integrity because of
24 the politics of the day or pressure from some interest group.
25 She's a person that will always do the right thing based upon
26 the facts and circumstances of any given situation or case.

27 In closing, I would implore the Committee to
28 confirm Darcel, and I give her my strong -- give you my

1 strongest recommendation to appoint her.

2 CHAIRMAN PERATA: Thank you, sir.

3 Anyone else? Yes, sir.

4 MR. GASTON: Good afternoon. I'd like to thank
5 all the Senators for allowing me the opportunity to speak here
6 today. My name is Michael Gaston, and I'm a defense attorney.
7 I started practicing law in 1987, always as a defense attorney.
8 I do not have a law enforcement background.

9 I had the opportunity to represent a client in
10 lifer hearing in front of Commissioner Woods. I'm here to, I
11 guess, to convey my feeling on her ability to be objective in a
12 parole hearing. And once again, I would like to say I'm
13 certainly a defense attorney.

14 I don't think that lifer hearings and decisions
15 made inside of a lifer hearing is an exacting science. I fully
16 understand that suitability, one of the big criteria is if a
17 person poses an unreasonable risk of harm to society. But once
18 again, what is that unreasonable risk of harm?

19 But I can state, I've been in front of a number
20 of commissioners in lifer hearings, and I can honestly say this.
21 As a defense attorney, I would love to see all my clients see
22 favorable results. This is not practical. At the end of the
23 day, there's always going to be some competing interests and
24 some balancing of interests.

25 What impressed me about Commissioner Woods is
26 that she was well prepared. And I can tell when a
27 commissioner's well prepared, because they ask the correct
28 questions.

1 She gave my client every opportunity to present
2 his evidence. We did present our evidence. I truly felt that
3 the evidence indicated my client was suitable for parole.

4 The commissioner and another commissioner did
5 find my client was suitable. It went for a full hearing. He
6 today has been released. He's doing extremely well.

7 I wish I could tell you I had this experience in
8 all of my parole hearings. I'm not going to sit here and
9 mislead what has happened in some of these hearings.

10 But in terms of this commissioner, I don't know
11 her. I'm not a friend of hers, but I have been in front of her
12 before. And quite frankly, I think the board should be very
13 privileged to have a person who is objective, and she has shown
14 really she is certainly objective.

15 I think she makes decisions based on the facts in
16 front of her. She was very well prepared. And although my
17 client had been to the board twice before, once before I
18 represented him, he was denied in each instance. I always felt
19 that he was suitable for parole. I know that Commissioner Woods
20 made the right decision.

21 Now, I know there's been some issues about a
22 person's law enforcement background, And quite frankly as a
23 defense attorney, I would prefer to see some more who are,
24 quote-unquote, "more leaning" in our direction. But at the end
25 of the day, what I'm really looking for, and I think most
26 defense attorneys are looking for if we're going to be truthful
27 is, we're looking for an opportunity where we can present the
28 facts and get a fair decision. And that's all you can ask for.

1 I know all of my clients are not going to go
2 home. That's an impossibility. But I feel always encouraged if
3 I know I have a person, a judge or a commissioner in front of me
4 that will allow me to present the facts in front of either the
5 court, or the administrative hearing that will sit down and take
6 the time not only to weigh, but be fully prepared, and to make
7 good, sound decisions; good, sound, objective decisions.

8 I truly feel that that's what Commissioner Woods
9 did. And I know she made the right decision in my case. I'm
10 pretty certain, once again, this is not an exacting science, but
11 I'd be very surprised if my client ever returns to prison. And
12 I think that had I been in front of another commissioner, my
13 client would still be incarcerated.

14 . And I can say this in closing, I've had plenty --
15 a number of people in front of the board when I think that bad
16 decisions were made. I truly believe that.

17 But I do believe, I'm pretty certain, that
18 Commissioner Woods made the right decision.

19 And I'm going to say this in closing and leave.
20 I don't think that a person should be penalized because maybe
21 some of the rules are not quite, I guess, defined in concrete.
22 And there's absolutely no way, I think, that some of these
23 criteria in the Parole Board can be exacting science.

24 That's why I think we should be really encouraged
25 that we have someone who has integrity, the ability to look at
26 the facts, and most importantly, to come to a good decision, a
27 decision not based on politics but the application of policy and
28 law in that particular area.

1 And I, as a defense attorney, never dreamed I
2 would be a situation like this of supporting a commissioner, but
3 I am certainly not embarrassed to say that I certainly support
4 her confirmation. I know she did a good job. She's capable of
5 it.

6 CHAIRMAN PERATA: Thank you, sir.

7 MR. GASTON: Thank you.

8 CHAIRMAN PERATA: We won't tell anybody you were
9 here.

10 [Laughter.]

11 MR. RUIZ: Good afternoon, everyone. My name is
12 John Ruiz. I'm a deputy district attorney from Riverside
13 County.

14 While I'm here representing the Riverside County
15 District Attorney's Office, I'm not anyone important. I'm not
16 in management. I'm not even a supervisor. I'm just a worker
17 bee. I do a lot of lifer hearings.

18 Thank you very much for the opportunity to
19 address this august body. I've never had this opportunity
20 before.

21 By way of my background, I first became a
22 prosecutor in 1982. I was assigned my first homicide trial in
23 1985. I did my first lifer parole hearing in 1990. I was even
24 a criminal defense attorney.

25 I've had 89 jury trials to verdict, and none of
26 my cases have been overturned on appeal.

27 I've been the lifer attorney in my office, doing
28 lifer hearings full-time since July of 2006. I say this because

1 in the last 17 years, I've seen a lot of commissioners come and
2 go. Most of them are very hard working, earnest individuals,
3 doing some very tough work under very tough conditions. Among
4 them are some very special individuals with insight and
5 perspective who truly get it. Some of them are very fast
6 studies, and when they turn out to be hard working individuals
7 who come from diverse backgrounds, well then you have a special
8 individual.

9 Commissioner Woods is one of those special
10 individuals. I would urge you to please confirm her.

11 The Parole Board should have individuals with
12 diversity within it. You have before you an individual who is a
13 woman of color, a Democrat, and an educator with teaching
14 something like 17 years at Mount St. Jacinto [sic] and Chaffey
15 College. Right there, speaking as someone with over a quarter
16 century of law enforcement behind him, I can tell you that
17 breaks the archetypal law enforcement mode.

18 I've done many hearings with her. She is one of
19 the most prepared commissioners I have ever appeared in front
20 of. She always does her homework and has reviewed every case.

21 She takes control of her hearings. That is very
22 important. I have had defense attorneys praise her to me for
23 her efficient, professional handling of her hearings.

24 On that subject with respect to the defense
25 attorneys, she enjoys an excellent reputation among many of the
26 defense attorneys. There are at least four off-hand that I'm
27 aware of, and the commissioner has their letters of support for
28 the Committee. I can think two of them off-hand immediately

1 whose names I can recall, and they do a lot of hearings. They
2 are regulars on the lifer circuit, and they have a very, very
3 high opinion of this lady.

4 We don't always agree, the commissioner and I.
5 She is independent, very much so. One of the cases from my
6 county just came up recently. It was the case of Brandon
7 O'Neil. That was at Chuckawalla Prison. It happened just a few
8 months ago, that lifer hearing.

9 Brandon and his crime partner, both juveniles,
10 did take-over robberies of Blockbuster Videos with stocking
11 masks and guns when the stores closed, terrorizing the employees
12 at gun point during their kidnap robberies. Then he and his
13 crime partner did the same thing a week or two later,
14 terrorizing the Blockbuster employees again at closing.

15 They were caught only as they were casing a third
16 Blockbuster Video, because they were preparing to rob it at
17 closing. Both pled guilty to life offenses of kidnap for
18 robbery and had their paroles denied several times.

19 Mr. O'Neil had programmed very well and had
20 received psychological reports estimating his risk for future
21 violence to be extremely low. He had even had two of his books
22 published while he was in prison. He had two separate book
23 deals.

24 We had reasons for opposing his parole. I wrote
25 the letter in opposition to parole. I put very sharp points in
26 that letter.

27 Because I had to be at another prison, I sent one
28 of our other attorneys, one of our other deputy district

1 attorneys, to oppose parole. She put forward our position.
2 Commissioner Woods was on that panel. That panel rejected our
3 position and gave Brandon O'Neil a release date.

4 As you are well aware, the Governor does not have
5 the authority to veto nonhomicide grants of parole, only
6 homicide grants of parole. He referred that back to the full
7 board for review. Automatically, our office opposes in those
8 situations.

9 Because of my respect for this commissioner's
10 judgment and perspective, I urged my management staff not to
11 oppose that parole at the full board meeting. We attend all of
12 the monthly board meetings, so it was not a question of
13 finances. I was there.

14 Because of my office's faith in my judgment in
15 this commissioner's judgment and perspective, for the very first
16 time in this administration's history, this office did not
17 oppose at the full board meeting the grant of parole by this
18 commissioner. We remained silent at the full board meeting.
19 That was a first.

20 It may be one thing for some to say that it's
21 okay to take a chance on the parole of a car thief who is a bad
22 risk on parole. And it may be okay for some to take a chance on
23 a low-level drug user who may be an iffy prospect on parole.

24 But the idea of a murderer or a violent offender
25 out there violating his parole, even just a little bit, makes
26 the public very nervous. That makes Joe and Mary Citizen very,
27 very nervous and with just cause.

28 That's why we need, both sides need, to keep

1 people like Commissioner Woods on the Parole Board when they
2 come along. People exactly like this commissioner, women of
3 diverse backgrounds, people that the Governor is always being
4 asked to put on the Parole Board.

5 I would ask you to please confirm Commissioner
6 Woods. Thank you very much.

7 CHAIRMAN PERATA: Thank you.

8 MS. DE LA GARZA: Good afternoon. Mr. Chairman
9 and Members, I thank you very much more allowing me this
10 opportunity to express my support and the support of the Office
11 of the Los Angeles District Attorney's Office.

12 My name is Alexis de la Garza. I am a deputy
13 district attorney. I have been an attorney for over 25 years in
14 the State of California. My entire career has been as a
15 prosecutor. During the time that I have been an attorney, I
16 have been before many judges and judicial officers in
17 misdemeanor courts, in juvenile courts, and for the last four
18 years I have been a member of the unit in my office that is
19 present at all lifer hearings for inmates out of the County of
20 Los Angeles.

21 During the course of my career, I have obviously
22 given a lot of thought to what makes a good judge and judicial
23 officer. There are several qualifications or qualities that I
24 have discerned over the years that make someone stand out from
25 other judges. Some of these things have all ready been
26 addressed by some of the people who spoke before me.

27 First of all, somebody who is well balanced in
28 their life experience. Somebody who has knowledge of the law

1 and court decisions as they pertain to the relevant issues.
2 Somebody who is impartial and provides a forum where the parties
3 are allowed to present their sides as an advocate for their
4 respective sides.

5 Somebody who is able to meticulously and
6 comprehensively analyze the evidence, make factual decisions,
7 and then apply the facts to the law. Someone who has a
8 dedication to making a correct and fair decision. Someone who
9 is independent and clear thinking, and someone who has the
10 ability to make a well-balanced and reasoned decision.

11 Now, it's very easy when somebody decides in your
12 favor to basically project all of these qualifications and
13 criteria to them. But it's the person -- it's when somebody
14 rules against you, that's when you're best able to adequately
15 assess whether or not the criteria is met.

16 I've had the opportunity since the commissioner
17 has been before the board to be before her on many occasions.
18 And although we haven't always agreed on some of the decisions,
19 she hasn't always ruled in my favor, one of the things I can say
20 about having appeared before her, in every case I was always
21 impressed by her professional demeanor and by her ability to
22 maintain an aura of impartiality throughout the proceedings.

23 Now, although she didn't always agree with me, I
24 always felt that during the course of the proceeding I was
25 allowed to advocate my position and the position of my office.
26 And I always felt that the other side was also given that
27 opportunity.

28 The fact that she didn't rule in my favor, in

1 looking back at those hearings, I could always say at the end of
2 the hearing I felt that her decision, even though it was not the
3 same decision I would have liked, was well-reasoned and
4 balanced. Obviously as advocates, we would always like to have
5 people rule in our favor; we would always like to prevail. But
6 that's not possible, and that's not realistic.

7 What we want from somebody who is in the position
8 of a judge, as we have our commissioners, what we want from them
9 is basically that aura of impartiality, somebody who is going to
10 be able to give both sides the forum so that we can in fact
11 present our case before them, and someone who is going to be
12 able to take in all of the information, analyze it, and then
13 make an independent and reasoned decision.

14 One of the things that came out today was the
15 discussion -- I think the comment was made by the commissioner
16 that she didn't accept certificates at face value.

17 That's not to say, and I don't believe she meant
18 to say, having sat before her, that she basically just didn't
19 give them any weight.

20 She took those certificates, at least in the
21 cases where I was before her, and she asked the inmates
22 questions about them to ensure that they were not just
23 meaningless pieces of papers, but basically indicated that this
24 person had in fact gotten something, gleaned something through
25 the experience.

26 It's been my experience with Commissioner Woods
27 that that's what she does. It's not merely words. It's
28 actions, and she makes a point of discussing with the inmate all

1 aspects of the criteria that she would need to use in order to
2 make a determination of suitability.

3 As I indicated, at the end of the day we want
4 somebody who is going to be fair and impartial. The criteria I
5 talked about in terms of making someone a good judicial officer,
6 I believe if you go through it, one of the things that my office
7 feels, and one of the things I feel, having sat before her on
8 many a hearing, is that she meets that criteria. And that's all
9 that we can ask, somebody who is going to be fair and impartial,
10 and is going to be able to give both sides the attention that is
11 necessary so that she can make a decision as to whether or not
12 an inmate is suitable.

13 And again, I think that she takes very seriously
14 what her decision is. Not only does she consider that the
15 inmate has a right at some point when he becomes suitable to be
16 released into the community, but she also has to take into
17 consideration the rights of the citizens to be safe in their
18 homes. These are two very separate things that she has to
19 consider, and I believe that she goes through it by reviewing
20 all the evidence, all of the information before her. And before
21 making a decision, I think that she is very meticulous in her
22 consideration.

23 Personally and my office would ask you to please
24 confirm her. And we indicate with strongest -- in strongest
25 measure our support for her as a commissioner.

26 Thank you very much.

27 CHAIRMAN PERATA: Thank you.

28 MS. NAFTEL: Good afternoon, Senators. My name

1 is Nancy Naftel. I'm also a deputy district attorney for Los
2 Angeles County. I, however, am only working part-time now. I
3 was a full-time deputy from 1983 to 1999.

4 Since February of 2006, I have done nothing but
5 lifer hearings, as I said, on a part-time basis. I have
6 participated in many hearings before Commissioner Woods, both at
7 California Institution for Women and also up at the California
8 Men's Colony in San Luis Obispo.

9 I feel like I'm almost repeating what everybody
10 else has said, but I'd like to assure you that I prepared this
11 on my own, and we didn't confer.

12 CHAIRMAN PERATA: I saw you writing feverishly
13 back there.

14 [Laughter.]

15 MS. NAFTEL: At any rate, first of all,
16 considering the past, or the crime, the crime itself, the life
17 crime is an important part of the decision-making process,
18 because some, even murders, are worse than other murders. And
19 that's a starting point. There are many other considerations
20 taken into account in deciding whether to grant parole or not,
21 as the commissioner did explain.

22 It's a very complicated job. I've appeared
23 before approximately ten different commissioners. I've appeared
24 at approximately ten different prisons for hearings.

25 Commissioner Woods is always prepared. She has
26 read the file. She knows the past history of the case. She
27 knows what the inmate has said in past hearings. And quite
28 frankly, some of these inmates lie, and they will tell you one

1 story at one hearing, and the next hearing they will tell you,
2 no, the real reason I did it was something different. But she
3 has read the reports, and she is able to then question the
4 inmates on these discrepancies and try to figure out what's
5 really going on.

6 There was one case back in November that I recall
7 where the psychological reports, which had been prepared by
8 different psychologists, were very contradictory. And she was
9 able to pull them together and evaluate them.

10 She's very intelligent. She asks appropriate
11 questions of the inmates. She's professional. She's
12 articulate, and she is fair to everybody. And she treats all --
13 all of us in the room with respect, including the inmate,
14 including the defense attorney, including the district attorney
15 representative.

16 She's independent. She does not favor one side
17 over another. And I'd like to say, too, she hasn't always gone
18 my way. She has granted parole in some cases where I have
19 opposed it, but that's a good thing because we do want somebody
20 who's independent, who brings her own judgment, her own
21 experience to the hearing and reflects upon the facts.

22 I think another thing I'd like to tell you. Two
23 weeks ago at the California Institution for Women I was speaking
24 with a woman who works there. And her job is to counsel inmates
25 on preparing for their hearings, and in general trying to work
26 towards getting a parole date. And during one of the breaks we
27 were sitting around, talking, and we were talking about how the
28 commissioner handles the hearings.

1 This woman said, "She's always fair." And she
2 has been in many a hearing, and she really is almost advocating
3 for the prisoners. She doesn't speak. She doesn't participate.
4 She's an observer. But she said, "The commissioner is always
5 fair." And I totally agree with that.

6 I'd like to mention one case that I think -- I
7 have not seen the letters that have been sent to the board, but
8 I understand one case that may have been mentioned is the
9 Trescia Henry case. This woman has done a great job in prison.
10 She has participated in numerous activities. She's been a
11 leader, a role model. She had many laudatory write-ups. She
12 has gotten an education. She's done very well.

13 But it came out two years ago in 2005 that this
14 woman had been lying to the psychologist throughout her
15 incarceration. She had been telling the psychologist that she
16 could not remember the facts of the case, different ones. They
17 were all trying to help her remember, trying to jog her memory.

18 And what this woman had done, she had gone into
19 the home of her 68-year-old landlady, who was very friendly with
20 her, who had helped her out over the years. Then she went in
21 and she shot her twice to get money.

22 She had said in the past that she had done this
23 in order to get money for a telephone bill, to pay other bills,
24 to get money for her mother. And now, of course, she's
25 admitting she went in there to get money for drugs, and she just
26 shot her.

27 But the upshot of this was that all of the
28 psychological reports were operating on the assumption that she

1 could not remember, that perhaps she had been too under the
2 influence of drugs or alcohol to even remember what had
3 happened. She finally came clean a couple of years ago.

4 And this was a denial because the commissioner,
5 or anybody else, could not rely on these psychological reports.
6 So, while we all commended the inmate for her great job that she
7 has been doing in her efforts to rehabilitate herself, a new
8 psychological report was ordered, and she was denied a grant at
9 this time.

10 She will get one eventually, I'm pretty sure, but
11 she needs to explore the reasons that she cannot tell the truth
12 to her psychologist or admit what she had done, because she
13 needs to know so that she won't get into the same situation and
14 be in that position of killing some other innocent elderly
15 woman.

16 The last thing I'd like to say is that all in
17 all, I think of all the commissioners that I've been in front
18 of, Commissioner Woods is one of the best.

19 And the other thing is, she doesn't make this
20 decision in a vacuum. There's always a deputy commissioner.
21 There are two people that make each decision. If they have a
22 split decision, one agrees -- one asks to grant parole, one says
23 no, then it goes to the full board. So, there are safeguards,
24 there are balances.

25 But all in all, Commissioner Woods has shown
26 herself repeatedly to be intelligent, professional, fair to
27 everybody, and independent. I think that's what you're looking
28 for in a commissioner.

1 Thank you very much.

2 CHAIRMAN PERATA: Thank you.

3 Anyone further in support?

4 Anyone here in opposition?

5 MR. CHANDLER: Good afternoon. My name is Keith
6 Chandler. First of all, thank you very much for the opportunity
7 to speak here today.

8 I'm a legal assistant and a criminal justice
9 consultant now. In what seems like a former life, I spent 21
10 years in prison, subject to the board's jurisdiction.

11 When a federal court ordered my release, they
12 found that I had been held eight years illegally by the board.
13 I have no doubt in my mind that's because of the board's law
14 enforcement bias. Frankly, they just don't like granting
15 parole. Those are the people who governors, over a number of
16 administrations, have appointed to this position.

17 I think Commissioner Woods is a very impressive
18 person. And I have no doubt in my mind that in every decision
19 she makes, she's reviewing the facts and making a decision that
20 she believes is the right one.

21 But she's also a professional in the criminal
22 justice field. And she should know the recidivism statistics of
23 people convicted of murder versus the recidivism statistics of
24 people who've committed other felonies.

25 And as Chairman Burton, who used to Chair this
26 Committee, used to do when he would query nominees, he'd always
27 ask them if the board members understood that study after study
28 over about 50 years has shown that the recidivism rate for

1 murderers is around one percent. And at times he would ask the
2 commissioners, "How do you justify denying parole to 95, 96, 97
3 percent of the inmates you see, when you know that's the
4 statistic?" Some of these people -- most of the people
5 Ms. Woods encounters have been in prison 20, 25 years. And of
6 course, none of the nominees really had an answer for that.

7 I think I have an answer. If you appoint people
8 with a law enforcement bias, you're going to get a decision that
9 they believe is the just one due to their bias. They can't get
10 over the offense.

11 Some of the opposition that will be more pointed
12 to follow will discuss particular facts and circumstances of
13 cases. I'm happy to say that the law firm that I work for,
14 we've only had a few hearings with this commissioner, and she's
15 done a pretty darn good job in those hearings.

16 But I think that what we need to understand is
17 that we can't keep appointing people to this board who come from
18 the law enforcement background and expect anything to change.
19 And ultimately, that's the job of this Committee.

20 The Governor's last two nominees -- Arthur
21 Anderson and Robert Doyle -- both are career law enforcement
22 people. I'm very happy that the Governor appointed someone like
23 Ms. Woods who left Corrections and law enforcement and went into
24 teaching and other professions. And that's a great thing.

25 But I think ultimately, this Committee has to
26 begin to reject every nominee with this type of background until
27 the board has balance. Because we're never going to change
28 things until this Committee discharges its duty, which it's been

1 doing a pretty good job of doing the last year or so, in
2 rejecting some of these nominees, but I think we need to
3 continue to reject all of them until we get the fairness and
4 balance that the statute requires.

5 With all due respect to the people who spoke in
6 Ms. Woods' support, it isn't about whether she's a person of
7 color or a woman. That's not the diversity the statute
8 requires. It's not just about ethnics or gender. It's about
9 profession. When every single person on the board shares the
10 same profession, with all due respect, 100 percent of California
11 isn't former law enforcement officials. And it's embarrassing
12 that that's the status of this parole board.

13 And when we know the recidivism rate for these
14 offenders one percent, and yet we're denying parole, literally
15 to 99 percent of the people after the Governor takes away the
16 vast majority of the scant few dates the board grants, that's
17 what we're doing.

18 And it would seem to me, as someone who's seen
19 both sides of the system, that there's only so much money in the
20 justice system pie. And if we keep spending it all
21 incarcerating 50 and 60-year-old people who've been in prison
22 for 20 or 25 years, who have serious health problems and are
23 costing the state far more than the average number of
24 40-or-whatever thousand dollars a year that we throw around,
25 we're doing a real disservice to actually making the public
26 safer, because every -- all the -- every inmate that we're
27 incarcerating needlessly, when we know what the statistics for
28 recidivism are, that's money being taken away from local law

1 enforcement, rehabilitation programs, and everything else. We
2 have to be smarter with the scant resources we have.

3 And if we continue to appoint people with this
4 type of bias background to the board, even though I have no
5 doubt in my mind Commissioner Woods believes she makes the
6 correction decision in every case, those decisions are almost
7 always to deny parole, and that's because of her background and
8 bias.

9 And I'd urge the Committee to reject her
10 nomination for those reasons. Thank you.

11 CHAIRMAN PERATA: We're going to take a
12 five-minute break.

13 [Thereupon a brief recess was taken.]

14 CHAIRMAN PERATA: As soon as Senator Ashburn
15 returns, we'll reconvene as a subcommittee.

16 Now we'll start. Please identify yourself.

17 MS. LETARTE: Thank you. Good afternoon,
18 Senator. It's a pleasure to be here.

19 My name's Diane Letarte, L-e-t-a-r-t-e.
20 I've been an attorney for over ten years, and half of that time
21 has been dedicated to doing a lot of parole revocation and lifer
22 hearings. I've done probably over 500 lifer hearings. I was on
23 the list of state-appointed attorneys that do a lot of these
24 hearings, and I also do private hearings.

25 I flew up from San Diego, and I am a private
26 attorney, so it wasn't -- it was at my own expense that I flew
27 up here. This is the first time that I've ever spoken in
28 opposition of a confirmation of a commissioner.

1 I have had probably over 20-25 hearings, lifer
2 hearings, with Commissioner Woods. There was specific instances
3 that I was here to relay, and I have provided information ahead
4 of time for this hearing to Ms. Sabelhaus.

5 And specifically, of these 25 or so hearings,
6 there's five specific hearings that stick in my mind in regards
7 to the way that the procedure was done. And I am in the
8 trenches, doing a lot of these hearings. I'll quickly let you
9 know specific instances that occurred.

10 I've had a hearing for a Mr. Juan Moreno that
11 actually occurred at Chuckawalla Valley State Prison. My client
12 had received parole dates by many, many commissioners. To be
13 exact, nine commissioners. He had had a parole date every time.

14 When I appeared in front of Commissioner Woods,
15 his parole date -- at that point we received a one-year denial,
16 coming off from having been paroled in the past.

17 When I was trying to do my closing argument, I
18 was trying to bring in the specific reasoning why I was opposing
19 the Governor's reversal, because it had been a Governor's
20 reversal, and I was told basically that I should wrap up my
21 closing argument, and that what I was talking about was not
22 relevant.

23 I think one of the things that we do here is, as
24 I do as an attorney and trying to represent my client, is to be
25 able to present relevant evidence. And I didn't feel that I was
26 able to do that. And in doing my closing argument, I was also
27 told that I only had one or two minutes left to do my closing
28 argument. That was one of the instances. And I ended up with a

1 one-year denial, which I do believe if evidence was presented
2 properly, that I think the parole date should have stayed.

3 Another occurrence that occurred was another
4 instance at the Chuckawalla State Prison. My client had
5 received mostly one-year denials. At the presentation of this
6 particular hearing, just for information purposes, at the
7 beginning of the hearing there's certain procedures we go
8 through, including we're asking if there'll be any confidential
9 materials used at these hearings. And in this particular
10 instance, the commissioners said that there would be no
11 confidential material used.

12 And after the presentation of our hearing, we
13 then step out, and there is deliberation by the commissioners.
14 When I stepped back in, then the decision is read by the
15 commissioner. And at that point, my client received a two-year
16 denial. And I asked why a two-year denial, since he had done
17 everything right, and had one-year denials in the past. And I
18 was told that the confidential material was used. And so, I
19 felt this was kind of a decision by ambush.

20 As a defense attorney, I'm supposed to be allowed
21 to at least question and ask for information so that everything
22 is -- is provided. And in this case, it was just -- within the
23 transcript I even asked if I could at least ascertain the
24 reliability of this confidential information, and I was denied
25 to do that. I wasn't allowed to do anything.

26 So, this decision to me was a decision by ambush,
27 never had a chance to present anything.

28 In an additional hearing that I had had with

1 Commissioner Woods, my -- in part of my presentation, I allow my
2 client to testify, and they are taken under oath, and they had
3 to be testifying under oath and telling the truth.

4 In this particular hearing, I had -- I was
5 wrapping up my closing argument, stating that my client had
6 testified in presenting his evidence under oath. And
7 Commissioner Woods said that -- basically called my client a
8 liar. She was saying that, okay, but now we both know that when
9 someone is under oath, it doesn't mean that they literally tell
10 the truth.

11 To me, it seems like there's bias from the start
12 at some of these hearings.

13 I had another hearing with Commissioner Woods
14 where my client received mostly one-year denials. In this
15 particular case, my client -- we had a court order from a writ
16 that was done in 2006, right before this hearing, which most of
17 these hearing were 2007 hearings. And I asked the board to take
18 judicial notice of the court order. And the court order was
19 basically, the Court finds -- and I read -- the Court finds no
20 evidence in the record of the facts the board rested on in
21 determining that the petitioner committed his offense in an
22 especially cruel and callous manner which demonstrated an
23 exceptional callous disregard for human suffering.

24 And I asked the board to take judicial notice
25 that this was not to be used as evidence. It was a court order
26 from the court.

27 But yet in the decision, the commissioner went at
28 length in her decision, relying on again the offense that was

1 carried in a manner which demonstrated an exceptionally callous
2 disregard for human -- so this to me was a disobeying of just a
3 court order.

4 And lastly, there was a hearing that was done in
5 July 2007 at Ironwood where, of all the hearings I've done, this
6 had to be the best client I've ever had. He had received mostly
7 one-year denials. And he had -- we presented where there was no
8 opposition from the district attorney. As a matter of fact, we
9 had a letter from the district attorney saying that it would be
10 suitable, that they're not opposing. In addition, we had
11 letters from the law enforcement, which I have never in over 500
12 hearings, ever had support from both of those agencies. And my
13 client basically was a prime candidate for a parole date.

14 He had a supportive psych report. In this case,
15 the psych report was ignored. During the hearing, my client was
16 accused of having twelve rule violations, which in reality in
17 the hearing before, the 2006, if the record would have been
18 looked at, he was actually -- only had -- it was corrected, and
19 there was only actually six infractions, not the fifteen.

20 So, in preparing for those hearings, you have to
21 look at prior, what happened previously, so that you can then
22 summarize where you're at as far as the suitability and the one
23 more year that has expired. And so, and in this case, again,
24 there was no evidence, but we ended up with a one-year denial.

25 And I do believe that -- I was listening to some
26 of the testimony earlier. And I do believe that Commissioner
27 Woods does what she believes is right.

28 The problem is that she will do what she believes

1 is right without -- and not what the law dictates. In these
2 positions, you have to go by what the law dictates.

3 I believe Penal Code 5011 (b) states, you know,
4 you shall get a date unless there's some exception. In this
5 case, it's like the exception is eaten up by the rule, because
6 we're getting mostly denials, denials, denials. And I do
7 believe it has to do with most of the commissioners come from a
8 law enforcement background.

9 So, you know, in summary, it's basically if you
10 can't follow the law, I don't think you should be confirmed.
11 And we should -- we should be looking at commissioners that
12 don't have this heavy law enforcement background, because they
13 -- most of their life, they were looking through their glasses
14 on how this should be done. Now you put them in a position
15 where you're asking to go against the grain of what they've done
16 all their life. So, it's just very, very hard.

17 Like I said, I've done over 500 of these
18 hearings. And I sit as pro tem judge in the Superior Court in
19 California down in San Diego. And I know some people have --
20 you know, you're going to have bias, but you try not to.

21 So, these are -- these are very hard hearings.
22 And I've been in front of many commissioners. And I just wanted
23 to share specific instances that occurred here, that I don't
24 believe Commissioner Woods was following the law.

25 I do oppose the confirmation of Commissioner
26 Woods. Thank you.

27 CHAIRMAN PERATA: Thank you.

28 MR. MILLER: Good afternoon, gentlemen.

1 Mr. Chairman and Members of the Committee, thank
2 you very much for giving me the opportunity to speak.

3 My name is Donald Miller. I'm not a lawyer, or
4 from law enforcement, or a district attorney. I'm a former
5 lifer who heard those magic words several times from panels of
6 the Board of Parole Hearings then, the Board of Prison Terms,
7 that I would pose an unreasonable risk of danger to public
8 safety, even though there was not a speck of evidence in the
9 record to suggest that.

10 I don't hold a chip on my shoulder. Probably
11 half of these people who we call lifers maybe should never be
12 released. But there's another 10,000 who -- of whom several
13 thousand qualify for parole because they no longer represent a
14 risk, any risk to public safety, beyond that of the average
15 citizen. And we're paying billions of dollars to keep them in
16 prison probably for political reasons, because they don't pose a
17 risk.

18 I'm here to make two points in opposition to
19 Ms. Woods, nominee Woods' confirmation.

20 First, I'd like to clarify a couple of things.
21 As far as unreasonable risk of danger to public safety, every
22 one of these prospective parolees has been evaluated by one of
23 the board's experts, the forensic psychologists, who have great
24 experience in this field, far more than the commissioners.

25 In Ms. Woods' hearings, except in one case -- and
26 I've reviewed about 15 transcripts of her hearings because I do
27 the litigation for a number of attorneys who do hearings and for
28 two law firms -- and in all but one case, these inmates had been

1 assessed to pose low risk or no greater risk than the average
2 citizen. Ms. Woods declared the opposite.

3 Now, certainly a commissioner can disagree with
4 the experts, but to do so you've got to present some evidence.
5 There's no evidence presented by Ms. Woods, just reading off the
6 facts of the commitment offense. Well heck, everybody who
7 commits murder is dangerous at the time the murder was
8 committed. That's not the question here. And so, these people
9 are being unfairly denied parole.

10 The second thing that came up, which was
11 misconceived, I think, is Ms. Woods asked a lot of these inmates
12 about what's the fifth step, or what's the sixth step of the
13 Twelve Steps Program. The courts have ruled in at least two
14 cases that an inmate cannot be required to participate in
15 faith-based programs, such as AA or NA. It's a violation of the
16 Fifth Amendment.

17 I don't believe Ms. Woods has any understanding
18 of what the laws and regulations are, and I'll get to that in a
19 minute.

20 Other thing is, this misunderstanding about
21 confidentiality. In the example that was given earlier, a
22 letter from a victim opposing parole is not confidential.

23 The board's confidentiality rules, and the
24 department's confidentiality rules, require that the inmate and
25 inmate's attorney be provided a copy of that document. If
26 there's sensitive information, such as a phone number or
27 address, it should be blacked out, because this hearing is not
28 an adversary hearing. It's a fact finding hearing to provide

1 the panelists with all the information that they can get so they
2 can make a correct decision.

3 And when that information is withheld and then
4 used against the inmate, saying that it's confidential when it's
5 not confidential at all is another breach of the regulations.

6 There's two bases on which we ask the Committee
7 to disapprove this nomination.

8 The first is the statutory basis, and you've
9 heard enough of this, I'm sure, but just to summarize: Penal
10 Code Section 5075 requires that the Governor -- and it's not
11 optional; it's mandatory -- shall appoint, and the committee,
12 this Committee, shall confirm commissioners who represent a
13 cross-section of the state's geographic, economic, gender, et
14 cetera, communities.

15 We have nine of the ten present commissioners are
16 from law enforcement, the very people that arrested these
17 people, put them behind bars, testified against them, and now we
18 have a -- this isn't a police commission. It's -- it's a Board
19 of Parole Hearings to determine recidivism potential to protect
20 public safety. Having a background in law enforcement is not
21 tantamount to qualification for the Parole Board. It's a
22 disqualification, an automatic disqualification, because it
23 doesn't fulfill the cross-section requirement.

24 I believe, in my humble opinion, that this
25 Committee's duty is the safety valve to stop the Governor from
26 what he's doing. He's violating the law.

27 I personally had to go to court when I was in
28 prison because the Governor kept reversing my parole grants.

1 And I don't have a murder case. He doesn't have that power. To
2 get a court to tell the Governor he can't do that, it shouldn't
3 be necessary to go to that extent.

4 Here we have a Board of Parole Hearings that
5 completely violates the statute. Not only is this nominee, but
6 the next three nominees that you're going to see all come from
7 law enforcement.

8 And this Committee has promised us in the past
9 that it would talk to the Governor, and at last hearing sort of
10 indicated that it had had enough of this. And I hope that's
11 this case.

12 So, the first basis for opposition is statutory.

13 The second basis is performance. These hearings
14 are turned into adversarial affairs. They're turned into
15 confrontational matters. The inmate's accused of being a liar
16 if -- by Ms. Woods -- if his version of the offense differs from
17 the prosecutor's, which will happen in every case.

18 And these are -- many of these cases are plea
19 bargains in which there's never been any testimony taken under
20 oath.

21 And then, just a clear up a bit, there was an
22 example given earlier where there was a discrepancy between what
23 the inmate told the psychologist and what some other testimony
24 revealed. I had a very similar case, but I honestly don't
25 remember if it was Ms. Woods' case.

26 And it's a misconception. Sometimes the inmate
27 is being asked why he committed the offense, and he might not be
28 thinking that the question is what was the motive, which was

1 money, but why would he be of such low moral character at the
2 time to commit -- to do something like. And there's a
3 misunderstanding in the way these are twisted around and used
4 against the inmate.

5 But the bottom line is, you can't deny parole to
6 an inmate because you have a personal belief that he or she is
7 lying, because the Penal Code and the regulations of the board
8 provide that you cannot base the denial of parole, even if the
9 inmate completely denies committing the crime and claims that he
10 or she is innocent, or refuses to discuss the crime at all.

11 There have been many instances in which I read in
12 these transcripts where the attorney is cut off, not allowed to
13 speak, even when it's a vital issue to the determination of
14 suitability. I've seen a couple of examples. One was pointed
15 out, where Ms. Woods would not comply with court order in which
16 the court said: You can't use the commitment offense anymore;
17 it's been 25 years. You've got to focus on current suitability.
18 And it was used anyway.

19 I've seen a misuse of the rules regarding
20 district attorneys. You've heard from two or three district
21 attorneys here who routinely show up at these hearings and
22 oppose parole. Some of them, I think, think it's their
23 function.

24 And when they -- they're not allowed to
25 cross-examine the inmate. That's the rules. They're not
26 allowed to ask the inmate any questions. They're only allowed
27 to ask questions of the panel, and only clarifying questions.
28 That's what the law is.

1 But some of these hearings are turned into
2 adversarial proceedings where the inmate is retried for
3 something which we already know he or she is guilty of.

4 The last thing is -- well, there's two more
5 points. The use of the crime, sure, the crime is the primary
6 factor, but there has to be some connection between the crime
7 and the current parole risk. The crime will always be what the
8 crime is, but after 20 or 30 years, there's got to be some
9 connection.

10 If the inmate committed the crime, if the
11 defendant committed the crime when they were loaded on drugs or
12 drunk, and they haven't had sufficient therapy for substance
13 abuse in prison, or if the psychologist doesn't think they have,
14 or if they were -- it was a gang shooting, and they still have
15 had gang affiliations in the prison, there's a link there.

16 But just to recite commitment offense facts year
17 after year after year, or prior criminal records, like Ms. Woods
18 does, without saying anything about current parole risk, is a
19 complete disregard for what the statute and the regulations
20 require.

21 And the last item is, these inmates who have been
22 very close to parole -- they've served far over the maximum
23 amount of time that the regulations call for. They've been
24 deemed a low parole risk or no parole risk by the
25 psychologists -- who have had one-year denials are all of a
26 sudden given multi-year denials by Ms. Woods in many, many
27 cases. I've seen at least four or five in the transcripts I've
28 reviewed.

1 Now, the law requires that in order to do that,
2 you must explain some evidence that shows that that inmate
3 cannot be found parole suitable in the usual one-year interval,
4 and there's no evidence given. Again, the commitment offense
5 facts are just read off, those immutable facts.

6 So, the attorneys that I work for, Mr. Hanson's
7 law firm, the law firm of Mark Grossman, and the five hearing
8 lawyers that I work for, whom I've discussed this with, oppose,
9 respectfully oppose, the confirmation of nominee Woods.

10 And I personally have nothing but respect for
11 what she's accomplished in the community. I live a few blocks
12 from Mt. SAC College.

13 Please allow me to make one closing comment.

14 At the last hearing, a comment was made by a
15 panelist here in voting for a commissioner that even if parole
16 was denied all the time, he wouldn't hold it against the
17 commissioner because in his particular district, which was
18 Riverside, a parolee had committed a heinous crime, a very
19 vicious crime.

20 I just want to point out that that parolee was
21 not a lifer. It was a nonlifer, not subject to any of these
22 proceedings.

23 The recidivism rate for lifers is less than one
24 percent. The only violent crime classified as such in the last
25 four years that I know of, of about 150 paroles by lifers is one
26 in which nobody was physically harmed. It was the potential
27 that they were focusing on.

28 I want to thank the Committee for the opportunity

1 to address you once again. Thank you.

2 CHAIRMAN PERATA: Thank you, Mr. Miller.

3 MR. WATTLEY: Good afternoon. My name is Keith
4 Wattley. I'm the Managing Attorney at this little office I call
5 UnCommon Law.

6 The attorneys in my office do represent a number
7 of lifers in parole hearings, and there is some risk to my
8 clients, frankly, of me appearing and opposing commissioners, a
9 risk that other commissioners may retaliate against my clients,
10 against me through my clients by perhaps denying parole.

11 But let's -- let's be frank. They're not
12 granting parole anyway. That's a reality. And maybe it gets
13 lost in our discussions of whether we like the commissioners or
14 not, but I'm more interested in what they do. I'm less
15 interested in whether their appointments match what the Penal
16 Code says.

17 I am concerned about that, but regardless of
18 their background, they're still required to follow the law once
19 they get appointed. And so, I look at whether they do or not,
20 and they don't. I haven't found one who does.

21 I personally like some of them, but it doesn't
22 really matter. And it shouldn't matter to you, either.

23 I have had at least one hearing with Ms. Woods.

24 SENATOR CEDILLO: It's being suggested that in
25 part why parole isn't being granted is that the composition of
26 the board is not constructed in the way that it would lend
27 itself towards granting a parole, that it's essentially stacked,
28 as some people might say?

1 MR. WATTLEY: I think that's absolutely true.

2 SENATOR CEDILLO: Right. And that if it were
3 constructed as the design is, meaning that we were effectuating
4 what the board's supposed to be, a reflection of the broad
5 spectrum of society -- all viewpoints, not exclusive to one
6 vocation or one perspective -- that then there would be more
7 paroles granted, and it'd be more reflective of what the society
8 looks like and thinks in terms of fairness, and justice, and
9 everything.

10 MR. WATTLEY: Well, the expectation would be that
11 you'd get more than lip service to the statute and the
12 regulations. You'd get more than a commissioner who reads a
13 script and then proceeds to deny parole because the crime was
14 especially heinous in every case.

15 So, there would be much better chance that you'd
16 get a real fair hearing, instead of, you know, people just
17 saying, "Oh, this person is really fair because they talked
18 about a lot of things." But at the end of the day, they denied
19 more parole for the same reason that they all do.

20 So you -- I think that you would improve the
21 sense and feeling and experience of fairness on a more diverse
22 board, I think.

23 Senator Perata mentioned earlier, raised a
24 concern about whether Commissioner Woods and presumably other
25 commissioners, ignore the post-conviction information. That is,
26 they don't pay enough attention or give enough weight to the
27 information regarding the prisoner's behavior subsequent to the
28 offense.

1 And I had a case in which it appears that
2 Ms. Woods did in fact ignore all the relevant information
3 regarding the prisoner's post-conviction behavior, and all the
4 clearly documented and undisputed evidence of his dramatic --
5 rehabilitation isn't a word I understand. Transformation I kind
6 of understand, and I've seen it. This is actually somebody who
7 seemed to demonstrate it.

8 The record in this case was undisputed that the
9 prisoner committed the offense during a drug-induced psychosis.
10 And Commissioner Woods actually seemed to acknowledge that that
11 was the case. In fact, even the prosecutor in the case
12 stipulated that the prisoner was legally insane at the time of
13 the crime.

14 And he'd dedicated his life over the last couple
15 of decades to overcoming his substance abuse issues, and even
16 turned around to help other prisoners do the same. And you've
17 had years of psychologists determine this man no longer presents
18 a risk to public safety.

19 Yet Ms. Woods denied parole solely on the
20 circumstances of the offense. And I think it's perhaps because
21 she believed that's what she was supposed to do.

22 But when you consider this in the larger context,
23 I think it's the approach that she and the rest of the
24 commissioners take in reviewing these cases, that they rarely
25 grant parole. I think Ms. Woods may have granted parole about
26 six times in the records that I have since she's been on the
27 board. At least four of those were reversed by the Governor.
28 But her record is as bad as most of the others with respect to

1 granting parole.

2 When you look at the larger context, this is a
3 board that is -- it's in trouble. I mean, I've spent a lot of
4 time studying their policies and their practices, and from what
5 I see, they're only beginning to understand just how bad a shape
6 they're in.

7 And sadly, in the recent months things are
8 getting worse. In January and February of this year, 52 percent
9 of all the scheduled hearings didn't go forward; 52 percent were
10 either postponed or cancelled for a variety of reasons. And
11 there doesn't yet seem to be clear fix for that.

12 But what is clear is that number of prisoners who
13 are eligible for parole, and therefore entitled to a hearing, is
14 increasing by hundreds every year. And what we see is that,
15 while there've been 12 commissioner positions since July of '05,
16 they've never had 12 commissioners with a full schedule for even
17 a month in that whole period, yet they're asking you to give
18 them three more positions that they can't fill.

19 And here's a secret that perhaps they don't
20 really share. They all ready can schedule enough hearings to
21 meet the need. They can schedule them with the commissioner
22 positions they have. They just can't complete the hearings.

23 When you postpone and then cancel half of them,
24 you'll never get there. They could all ready schedule what they
25 need. They don't need more commissioners to do that.

26 But because they postpone so many, and the bigger
27 reason, because they don't let anybody out, they will never be
28 able to really resolve some of these problems that we come and

1 talk about each time.

2 And you have -- you always come back to the issue
3 of, well, should they be granting more parole? Yeah, they
4 should.

5 I don't claim to be the kind of person who should
6 sit on the board, and that I could make these decisions. These
7 are very difficult decisions they make.

8 But I also think it is a huge problem that they
9 come at this process with the backgrounds that they bring that
10 perhaps don't allow them the perspective that would more often
11 grant parole and determine, okay, this person appears to be
12 rehabilitated, whatever that means -- transformed if you like
13 that word -- but in any words, not a risk to public safety.

14 And I think that this is the only place, other
15 than the courts, and they're losing regularly in the courts, but
16 other than the courts, this is the only body that can check this
17 board. And the way you do it is, you stop confirming
18 commissioners who aren't following the law.

19 None of them are following the law. I don't care
20 what their backgrounds are right now. None of them are
21 following the law. And you can't continue to -- to allow them
22 to do what they're doing.

23 And so, for that reason I ask that you not
24 confirm Ms. Woods.

25 CHAIRMAN PERATA: Thank you.

26 MR. NORTON: Good afternoon, Senator Perata and
27 Members of the Committee.

28 My name is Marc Norton. I'm a defense lawyer.

1 I've been practicing law just a little over two years. I do
2 parole hearings; started doing them in law school and was really
3 just enamored by the process. So, I continued to take state
4 appointments.

5 I don't do it because I'm a bleeding heart
6 liberal and I think all lifers should be paroled, because
7 frankly, as a father and potentially a grandfather in the near
8 future, I'm very thankful that there are institutions that keep
9 some of these individuals behind bars.

10 Last year, I had the privilege of coming here and
11 speaking before this panel at Commissioner Shelton's
12 confirmation hearing, and I actually spoke in support of Linda
13 Shelton.

14 Given that opportunity again today, I don't think
15 I would do that. Not because I don't like Ms. Shelton. She is
16 a wonderful woman. I really have a great deal of respect for
17 her. She treats the inmates with dignity and respect.

18 But as has been pointed out by this panel, the
19 law is not being followed in these parole hearings. It just
20 isn't.

21 I've done about 250 hearings. I've received 18
22 grants, which I think is -- I'm not good at math -- but that's
23 actually pretty good compared to what the normal rate is, and I
24 don't think that's because I'm such a great attorney. I think
25 it's because my clients are -- have been found suitable because
26 they were suitable.

27 As to Ms. Woods, I've appeared before her, I
28 think, for like eight hearings is all. So, I don't have any,

1 you know, great insight to give you regarding her. I think
2 she's a fantastic person. I have a great deal of respect for
3 her. She conducts herself in a very professional manner.

4 The eight hearings I had, I didn't get a date
5 from her. There was one individual I thought was, under the
6 statute, certainly suitable; the others were not. But that
7 individual did not get a date.

8 But, you know, the more I hear some of the more
9 learned -- my learned colleagues talk about the backgrounds of
10 the panel, I am concerned about that as well. And I want to
11 share with you just one case I had in November of last year at
12 Folsom State Prison.

13 My client was convicted of attempted murder of
14 his wife. He was a Vietnamese national who came here in 1979, I
15 believe, as a political refugee, was married, and eight years
16 later had -- again, was married, three children, and his wife
17 was having an affair, and she was going to leave him.

18 He had, in the past couple months, started
19 consuming alcohol and had become an alcoholic.

20 Well, in an argument and in a rage, he got a can
21 of gasoline, threw it on his wife, lit a piece of paper with a
22 match, and then threw the paper on his wife, engulfing her in
23 flames. Fortunately, she survived with 80 percent burns over
24 her body.

25 And he had been before eight parole boards
26 because he had -- his minimum eligible parole date was on a
27 seven to life.

28 My closing argument basically was, this man will

1 never get a parole date because of the heinousness of this
2 crime. He will never receive a fair hearing because the visual
3 imagery of this crime is such that he'll never receive a parole
4 grant. I said, I hope I'm wrong, but I'm sure I'm not.

5 So, we reconvened. They deliberated, and they
6 found that he was suitable for parole, and I about fell out of
7 my chair. I couldn't believe it.

8 But of course, the Governor has referred that to
9 the en banc on April 15th. And if Ms. Woods is sitting on that
10 panel, she'll be considering that -- that decision to grant
11 parole.

12 And I would like to point out, the commissioner
13 who gave that date was, I believe, one of the -- Mr. Miller said
14 that there's only one who does not have a law enforcement
15 background. He's the one. I'm pretty sure it's him.

16 So, my concern is that the heinousness of this
17 crime -- and again, like Mr. Wattley, I come here realizing that
18 there could be some backlash against my clients. And I don't do
19 this because -- again, I do it because I believe in due process.
20 And I would hope each of the commissioners are impartial enough
21 to put aside any personal differences, because these aren't
22 personal differences.

23 But my point is that when this case goes to the
24 en banc, there's going to be nine of the ten commissioners, and
25 I need a majority of votes to confirm this parole date who are
26 coming from law enforcement backgrounds and are going to look at
27 this crime which, again, very vivid. And I'm sure that his
28 grant of parole will probably be reversed. Again, I hope I'm

1 wrong.

2 So again, I just want to say that because the
3 parole grant rate is like four percent, I believe if the law
4 were being followed that number would be probably closer to
5 25-30 percent. Again, I don't believe that all life inmates are
6 suitable for parole because they're not, but there are many who
7 are, who are not being granted parole.

8 And with that, I will submit my comments. Thank
9 you.

10 CHAIRMAN PERATA: Thank you, sir.

11 MR. WARREN: Good afternoon. My name is David
12 Warren.

13 Senator Perata, the next time you suggest that I
14 sound like I'm dying and I should get a glass of water, I'm
15 going to take you at your word, because the next day I ended up
16 in the CCU. So, when you leave here in December, I'll pay for
17 the medical license plaque for you to hang outside your office.

18 [Laughter.]

19 MR. WARREN: I'm here in opposition today for
20 several reasons. I will not be redundant, and to point to --
21 point out the fact that we need a balanced membership on the
22 Board of Parole Hearings.

23 But I'd like to cite to you two what I believe
24 are very egregious examples. I come by my information through
25 the chaplaincy. And for that reason, I feel somewhat hesitant
26 to identify people, which perhaps is not fair to the nominee,
27 but the information comes to me through -- through, yes, as a
28 chaplain. And I don't feel that it's appropriate for me to

1 disclose all the facts.

2 But as Mr. Kernan described, there was a
3 geriatric individual -- I found out I'm 20-plus past what he
4 considered to be geriatric -- who had been granted four parole
5 dates. This commissioner, based on the underlying offense,
6 denied it on the fifth time and gave him three years.

7 That strikes me as being very odd when, after
8 four times in a row, other commissioners had granted a parole
9 date.

10 I took the time to check the background of this
11 inmate. No 115s, no nothing. Nothing had changed except that
12 the person had come up before a different commissioner.

13 But the one that I find the most striking is a
14 member of the Jewish community that I see. She's been inside
15 for 15 years. She was a drug addict. She was living with a man
16 who was her drug supplier, and she killed him, because it was
17 the only way she could, she felt, she could escape the abusive
18 relationship. No justification for that. It was 15 years ago.

19 In the 15 years she's been at CIW, she's
20 completed every course and program that CIW offers. Not only
21 that, but she was the valedictorian recently at the AA --
22 Associate of Arts graduation class at CIW.

23 She attends the Jewish religious services -- I
24 hate to use the pun -- religiously, but she does. She's a tutor
25 and a mentor for every other inmate, not just in the Jewish
26 community, but among the Muslims, and among people of color who
27 cannot read or write. And she provides the education that the
28 Department of Corrections cannot.

1 Yet she was given a one-year date because of the
2 underlying offense. There's something really wrong here. If
3 there was a female Russell Trunzo, who was recently granted an
4 order by the District Court in San Francisco, it's her.

5 You know, I can understand why I cannot trust
6 other people, but she trains dogs for people who need seeing-eye
7 dogs, who need assistance dogs. You can fool people, but you
8 can't fool animals. And she -- she trains the untrainable
9 animals at CIW. That's a measure of a person.

10 There's something wrong with the system. We
11 can't have only law enforcement people on the Board of Parole
12 Hearings. There is a built-in predisposition and an assumption
13 that people are bad and will not change.

14 I have the exact opposite prejudice. I presume
15 people will change, and that tends to blindside me, and I'm the
16 first to admit it.

17 But we need some psychologists. We need medical
18 professionals. We need people in sociology on the board, not
19 just law enforcement people.

20 And if we confirm today, we're not sending that
21 message.

22 What frightens me the most is, I see the inmates
23 inside. Because they do not believe they will ever have a
24 chance, although none of them are literate enough to read Dante,
25 they have all accepted the belief that they'd rather be a king
26 in hell than an angel in heaven because they have no hope. And
27 the Board of Parole Hearings takes away any possible hope.

28 In closing, I'd like to follow up on a prior

1 comment about the fact that the Board of Parole Hearings is
2 overwhelmed.

3 The Israeli Counsel General and I met with the
4 Department of Corrections, and they have offered to take all
5 Israeli nationals and house them in Israel until such time as
6 they finish their term of incarceration.

7 I met with the British Counsel General, the
8 French Counsel General, the Canadian Counsel General, and they
9 also all want to make the same offer to the Department of
10 Corrections.

11 Our problem is that despite numerous attempts to
12 meet with Mr. Davis -- and if you'll recall at his confirmation,
13 he offered to have lunch with either you or I -- and even though
14 Ms. Curran has called numerous times to try to set up a meeting,
15 he's refused to do so. And after numerous attempts to meet with
16 Mr. Hoshino and Mr. Ron Franz at the Board of Parole Hearings,
17 the Israeli Counsel General and I can't get a meeting to discuss
18 this very issue.

19 I'm not asking anyone to advocate it, but right
20 now with the Governor threatening to release 20,000 inmates,
21 even if we take 3,000 foreign nationals and transfer them
22 voluntarily, it would be a benefit to the State of California.
23 I would ask for your good offices to assist in just establishing
24 the meeting. They can reject it; that's up to them. But
25 somebody has to get things moving.

26 Thank you very much.

27 CHAIRMAN PERATA: Thank you, sir.

28 Anyone further?

1 I apologize for everybody having to bounce in and
2 out, but we're at that time of year when there are four or five
3 committees meeting simultaneously.

4 Mr. Cedillo just went to make a quorum in Health
5 Committee. I think I'm going to wait a few moments until he
6 returns before we conclude.

7 [Thereupon the Committee
8 acted upon legislative items
9 on the agenda.]

10 CHAIRMAN PERATA: We'll return now to
11 Ms. Woods.

12 Any comments, concluding by the Members of the
13 Committee?

14 SENATOR ASHBURN: I just have one observation,
15 one question for you.

16 Reference has been made repeatedly to persons
17 with a law enforcement background not being appropriately
18 suited, not an appropriate background to serve in this
19 capacity.

20 I mean, I think you're a teacher. How do you
21 view yourself?

22 MS. WOODS: As I stated earlier, that's just a
23 small part of my professional career, but I've spent more time
24 as an educator and an individual in public service for
25 rehabilitation than I have as a peace officer.

26 SENATOR ASHBURN: Would you recap again how that
27 breaks in years in each aspect?

28 MS. WOODS: Over a twelve-year period, I served

1 with the Los Angeles County Sheriff's Department for maybe two
2 or three years.

3 Then I went back to school, and I earned my
4 Master's, so I was working on public administration Master's.
5 And I was also working as a substitute teacher at the high
6 school level, middle school level, during that time. I was also
7 teaching at Mt. SAC.

8 But subsequent to getting my Master's, I went
9 back and I became a teacher at the Youth Authority. I did that
10 for about a year-and-a-half, and for promotional purposes, I
11 became a youth counselor in the sex offender unit, subsequently
12 going out to parole. And I did that for about three years.

13 Then I left state service, and from 1994 on, I've
14 been strictly in education, grant writing for community-based
15 programs with the Regional Occupational Program as an
16 administrator for educational and rehabilitation.

17 SENATOR ASHBURN: So, your Master's Degree is in
18 public administration?

19 MS. WOODS: Correct.

20 SENATOR ASHBURN: And what subjects did you teach
21 at the Youth Authority?

22 MS. WOODS: I taught high school English, as well
23 as developing the pre-parole class, which was assisting the
24 wards at the Heman G. Stark Youth Correctional Facility with job
25 search skills, interview skills, how to fill out an application,
26 and retention and work ethic skills.

27 SENATOR ASHBURN: During that time that you were
28 employed within the correctional facilities, did you develop a

1 bias in any manner against those individuals who were
2 incarcerated?

3 MS. WOODS: No, not at all. I developed strong
4 relationships, a rapport with the wards, so much so that if
5 there was something that they needed to discuss that they
6 wouldn't discuss with the higher ups or the brass, as we called
7 them, they would come and bring it to me. And that way, I would
8 act as a intermediary [sic] [sic] to go talk with whoever needed to
9 handle the situation.

10 So, I believe that I was in a position of trust
11 by the wards, and they felt comfortable with actually relating
12 with me.

13 When I was a parole agent, the families of those
14 -- those wards that were on parole had a rapport with me in the
15 community.

16 No, I did not develop any bias.

17 SENATOR ASHBURN: My interpretation of what you
18 just said is that you developed empathy toward those who were
19 incarcerated during those years that that was your employment,
20 your experience.

21 And I'm speculating, and I'm not asking you to
22 fill in all the details, but I'm speculating that you probably
23 have some ideas that you've developed because of your
24 experiences about the shortcomings within our correctional
25 system in education, in training, in preparing inmates for
26 release.

27 MS. WOODS: Most definitely. And that is why
28 when I took the position at the Regional Occupational Program,

1 they kind of gave me free rein to take their ROP into a
2 different direction.

3 My first thought was to try and assist the wards
4 within the California Youth Authority, because I knew that those
5 gaps were inherent to their growth and their reassimilation.
6 So, I developed programs specifically to help them.

7 SENATOR ASHBURN: So, if I referred to you as
8 teacher from here on out, rather than a cop or law enforcement
9 agent, you're not going to be offended by that?

10 MS. WOODS: No, in fact I prefer it.

11 SENATOR ASHBURN: Thank you.

12 CHAIRMAN PERATA: Well, as I mentioned at the
13 outset, the purpose of this hearing today more than anything was
14 to make sure that there was an element or standard of fairness.

15 We have made the claim, or we have made the
16 position, I thought, pretty clear that we were going to be
17 looking for in the Governor's appointments more randomness of
18 selection based upon the Code, that there would be people who
19 were doing different things in walks of life.

20 That has not happened. But it's, candidly,
21 pretty consistent with what's been going on with the
22 administration as it regards the Department of Corrections.

23 We have a huge sucking sound going on in the
24 budget, and it is Corrections. The spending is out of control.
25 That may or may not be remedial, but there's so many
26 inconsistencies.

27 We have a parole system that we set up that I
28 think is bereft of any hope at all. I've been vexed repeatedly

1 by why people can't maintain parole dates, and then I looked
2 into it. And what I have been told would account for some of
3 it, but not all of it.

4 We've had a miserable time getting a clear
5 understanding of how the psych evaluations should work.

6 Now, there have been some improvements, I think,
7 on when you've received the material. Obviously, Ms. Woods,
8 everybody seems to agree that you come to the parole hearings
9 very well prepared.

10 But it is a broken system. And frankly, there's
11 not much of the system that this board has anything to do with.
12 I mean, we rail against the system.

13 And I don't think that because your prison budget
14 is growing billions of dollars a year, that we should say that
15 we're soft on crime if we want to question that. I reject
16 categorically and out of hand that anybody here who has
17 questions about parole is soft on crime, or doesn't have respect
18 for law enforcement. That is simply a cheap bumpersticker
19 attack on politicians.

20 The fact of the matter is that the Governor's
21 policies are not consistent even within their own promulgation.
22 How can we say, let 20,000 or 25,000 prisoners, low-level
23 prisoners, out of prison summarily, and then we don't want to
24 let anybody out who has served 20 or 30 years for a crime where
25 the statistics suggest that less than one percent are
26 recidivists, when the system itself has a 70 percent recidivism
27 rate?

28 And I know my Republican colleagues, they'll be

1 dead, and we'll be watering their graves before they'll let
2 anybody out of prison summarily. They've made that very clear.

3 So, I don't understand the inconsistency there at
4 all.

5 So again, until this administration seems to want
6 to come to grips with at least a small part, this panel, at
7 least the majority of this panel will not go forward. You know,
8 I would think that we would be putting everybody at great risk,
9 but the fact of the matter is, very few people are given parole
10 anyway.

11 And frankly, a lot of the things that I see maybe
12 even question why we have a Parole Board. I mean, if we've got
13 this thing down so pat, then I don't see it.

14 I believe in redemption as well. But I believe
15 redemption means that there are people, and you have to make
16 judgments. And I'm not trying to second-guess your job at all,
17 Ms. Woods. The fact that you even want to do it still numbs me.

18 But I don't think the system is fair. I don't
19 think that we are doing well by what we should be doing.

20 It certainly does not conform to my beliefs,
21 whether it is my faith identity, my human identity, what I do
22 here, the role and responsibilities that I've been given by my
23 constituents, or my love for the Constitution.

24 So, I regret that I cannot allow the confirmation
25 to go forward.

26 But you are in a position where the
27 administration must pay attention to what this branch of
28 government does and our responsibility.

1 And I'm mind-boggled with the idea that maybe
2 somebody wants our prisoners and we can send them to them, but
3 we're not going to even return a phone call. I will follow up
4 with that personally.

5 But I once before asked the Governor directly to
6 see if we couldn't have a better cross-section of individuals,
7 not racially, not ethnically, not geographically, and not in
8 terms of gender. Simply, can we have a few people that are the
9 practitioners of some of the other arts, you know, psychology.
10 I'd take a priest; I'd take anybody. It hasn't happened.

11 So with that, I will entertain, if you'd like, a
12 motion.

13 SENATOR ASHBURN: Mr. Chairman, with all due
14 respect, I believe I would be remiss in my responsibilities to
15 not make an affirmative motion for Ms. Woods' confirmation.

16 In the statement that you just made, if that's
17 the intent of the majority on the Committee, I want everyone to
18 understand that you will be rejected, that you will lose your
19 position as of April 4th, that you will no longer be able to
20 serve on this particular board and to use your life experiences,
21 as a teacher with a Master's Degree in public administration, to
22 evaluate the suitability of individuals for release.

23 And I think that would be a terrible loss to the
24 State of California. I think you're exemplary in every manner.

25 And I would urge upon my colleagues that this
26 particular individual, all other arguments notwithstanding about
27 our concerns about the system, I asked the nominee a moment ago
28 if she had developed observations for improvements within the

1 system. And I'm sure she is very likely as expert as anybody on
2 the shortcomings of the system as it is exists today.

3 The issue before us is the qualifications, the
4 temperament, the ability, the judgment, and the good character
5 of this particular individual. And I would urge you to give
6 consideration to that as I make the motion to confirm.

7 CHAIRMAN PERATA: We have a motion to confirm.

8 I would only add that we also have to include
9 their record of performance. We make the same judgments here
10 that she's required to make. We have the same limitations. In
11 the final analysis, there is no absolute. So in that sense, we
12 have the same problem and the same responsibilities.

13 So with that, call the roll.

14 SECRETARY WEBB: Cedillo. Padilla. Ashburn.

15 SENATOR ASHBURN: Aye.

16 SECRETARY WEBB: Ashburn Aye. Perata. One to
17 zero.

18 CHAIRMAN PERATA: One to zero, the motion fails.
19 That will be held in Committee.

20 MS. WOODS: Okay, thank you very much.

21 CHAIRMAN PERATA: Thank you very much for being
22 here.

23 [Thereupon this portion of the
24 Senate Rules Committee hearing
25 was terminated at approximately
26 4:17 P.M.]

27 --00000--
28

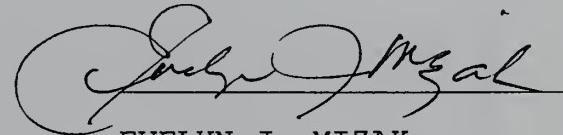
1 CERTIFICATE OF SHORTHAND REPORTER

2
3 I, EVELYN J. MIZAK, a Shorthand Reporter of the State
4 of California, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing transcript of the Senate Rules Committee hearing was
7 reported verbatim in shorthand by me, Evelyn J. Mizak, and
8 thereafter transcribed into typewriting.

9 I further certify that I am not of counsel or
10 attorney for any of the parties to said hearing, nor in any way
11 interested in the outcome of said hearing.

12 IN WITNESS WHEREOF, I have hereunto set my hand this
13 ^{1st} day of April, 2008.

14
15
16
17 
18
19
20
21
22
23
24
25
26
27
28

EVELYN J. MIZAK
Shorthand Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPENDIX

Senate Rules Committee

MAR 13 2008

Goals

Appointments

1. Please provide us with a brief statement of goals. What do you hope to accomplish during your time as the director of the Department of Consumer Affairs? How will you measure your success?

I have established three overarching goals for the department, and have been working with my Executive team on implementing them during the last 11 months. Each goal represents a strategic shift in how the department achieves its core mission.

The first goal is to invest in the empowerment of consumers to enable them to make better financial and marketplace decisions for themselves and their families. An informed consumer is the best protection against fraud and scams. Providing intervention through education at the front end of consumer financial transactions (i.e., ensuring that consumers know their rights and responsibilities at the point of purchase) is much less costly than the back end intervention of enforcement actions. Some of the consumer education activities the department has worked on for the last few months and will continue to work on during my tenure include a campaign to promote professional licensure; increased consumer outreach through traditional and non-traditional mediums to reach ethnic audiences; and a paid statewide advertising campaign to promote clean air and the Bureau of Automotive Repair's consumer services. In addition, the department has begun discussing a consumer literacy campaign.

The second goal is to facilitate increased opportunities for the department to act as a statewide consumer advocate. To implement this goal, I have convened consumer leader roundtables across the state, to which the department has invited not only local consumer organizations but also community-based organizations such as legal aid organizations, senior organizations, and ethnic community organizations. At the roundtables, current and emerging consumer issues are discussed and the department showcases its latest consumer protection activities and tools, such as new publications and the announcement of conferences. Also in the last few months, the department in partnership with the California Consumer Affairs Association, has been working on a statewide, weeklong professional regulatory and consumer advocacy conference in November. The conference will be the first of its kind in that nearly every one of the department's boards will hold its board meetings at the same location, while the California Consumer Affairs Association will simultaneously conduct workshops on various consumer issues and trends (e.g., the current mortgage crisis, identity theft, etc.). The conference will provide a unique opportunity for consumer leaders throughout the state to exchange ideas and information with regulatory board members. My hope is to hold such conferences annually.

In addition, the department promoted the "face" of consumer advocacy through the "Rebuild Your Life" campaign partnership efforts following devastating fires in Southern California last year. The department also worked collaboratively with the Business, Transportation, and Housing Agency to help reach out to homeowners through "Consumer Mortgage Workshops" held statewide.

The third goal is to restructure the relationship of the department's 38 regulatory entities, to ensure a purpose-driven mission. To accomplish this, I have reorganized the department to allow it to better serve its boards and bureaus. The reorganization will also strengthen communication between me and the board and advisory committee members. In addition, the department, in collaboration with its regulatory entities, developed and launched a strategic plan. The boards, bureaus, and programs worked with members of the executive staff to develop a department-wide plan. The strategic plan goals include:

- California consumers are empowered decision-makers.
- The California license represents the gold standard for professional licensing in the nation.
- DCA is regarded as an effective and innovative model of state government.
- DCA is considered an employer of choice by jobseekers.
- Businesses choose to operate in California because they are certain that the marketplace is safe and fair.

This department will measure its success by tracking the number of complaints we get from consumers; increasing the number of public-private consumer partnerships; measuring levels of consumer knowledge through phone surveys; improved relations with department's regulatory entities; and increased participation in consumer-related events across the state.

2. What role do you, as the state's chief consumer advocate, have in working with boards and bureaus within DCA? How do you monitor their performance and help correct deficiencies on an ongoing basis? When they fail, how do you hold them accountable? Please provide three examples where you have partnered with the Governor and the Legislature to correct these deficiencies on an ongoing basis.

As Director, I work closely with our boards and bureaus, both at the staff level and with board members. I regularly attend board meetings. I believe it is important to maintain open communication, both to ensure that the Department is helping the boards with their needs and to continue to emphasize our mission of consumer protection.

We ask the boards to submit monthly reports to identify monthly activities such as licensing and enforcement. We also collect licensing backlog information.

As we identify opportunities for improvement, we regularly make contact with board and bureau staff to explore ways in which improvements can be made. Most of the issues that are identified don't require involvement from the Governor's Office or the Legislature. Our approach is to continuously work with our boards and bureaus to improve service to California consumers.

Having said that, there are examples where we do proactively work with the Governor's Office and the Legislature. One recent example involves working closely with the Governor's Office and the Legislature to provide consumers immediate and valuable information on home mortgage relief. We have helped

plan and facilitate town hall meetings on this subject throughout the state, several with members of the Legislature. The Department has also begun a campaign to promote the value of the California professional license. We have provided information kits to members of the Legislature to help identify different scams consumers may face. We worked with our boards and the Legislature on several pieces of legislation, including SB 252 (Aanestad, Chapter 13, Statutes of 2007) and AB 253 (Eng, Chapter 678, Statutes of 2007).

3. The Department of Insurance, Public Utilities Commission, and Department of Managed Health Care, all have statutorily designated public advisors, ratepayer advocates, ombudspersons, and intervener programs to make sure that the voice of consumers is represented in all regulatory proceedings. Do you believe the public would benefit from a similar position at DCA? Why or why not?

My role as Director includes protecting and promoting consumers' interests, and that part of my mission is central to all of my actions as Director, and I encourage all opportunities for public comment. In fact, many of our boards have public member majorities, which provides a valuable means of public input into our functions. The challenge in implementing a similar program lies in the significant difference between the 38 regulatory programs that cover a wide spectrum of subjects, and consumer issues are not the same across all programs, which means we do not have one main topic to be addressed by an advocate.

The department is always looking for expanded opportunities for consumers to participate by giving their input. As already discussed, the November board conference will provide consumers with an opportunity to learn about important protections available to them. In addition, the department has been working on implementation of webcasting technology in our hearing room. We anticipate having the technology available in a few months and will encourage boards to utilize this service to enhance transparency of services.

Recruitment, Retention, and Succession Planning

The demographics of the state workforce are such that state agencies need to actively engage in workforce and succession planning to recruit and train workers to fill both entry level and management positions. Data from the State Personnel Board indicates that 44 percent of the state's current workforce is over the age of 45. With 35 percent of the state's workforce eligible to retire in the next five years, the state could face a loss of over 80,000 personnel in a short period of time.

Several boards, such as the Medical Board and the Board of Accountancy, have expressed frustration with the civil service system when trying to fill vacant positions. At a recent Board of Accountancy meeting, a member expressed concern that enforcement was reaching crisis levels due to insufficient staffing.

A new technology, known as Boomerang, may help alleviate some staffing problems. This database facilitates retirees offering their services back to the government for up to nine months a year. The Department of Consumer Affairs was among the first chosen to implement the system.

4. *Have you spoken with individual boards and bureaus about staffing? What steps have you taken to help them more effectively recruit and retain staff for certain job categories?*

Yes, recruiting and retaining qualified staff is a constant challenge and is reflected as a high priority in our strategic plan. We have been proactive in discussing these issues with Department of Personnel Administration management. We are also participating in the HR Modernization Plan, a partnership effort between SPB, DPA and DOF that will streamline and accelerate the state's civil service hiring process. To help in this effort, the department has loaned three staff positions to the Department of Personnel Administration to assist with the HR Modernization Plan.

We are all cognizant of the state's fiscal situation and while we all clearly value the work of dedicated public servants, the reality is that it may take many years for us to achieve salaries that are competitive with the private sector and other public agencies.

For this reason, I believe we need to be more resourceful about recruiting. We are starting to have success in this area. As an example, our Division of Investigation has now filled all of its vacancies, while other state agencies are still recruiting for investigators. They employed several strategies, including emphasizing the value of the work we do and the impact we have on consumers; the positive working environment and nature of the work week schedule; and demonstrated a willingness to train prospective peace officers.

The department's vacancy rate which includes boards is 10.37%, compared to the state's approximate 14%. Even though the department is ahead of the state, it has identified recruitment, retention, and succession planning as a strategic objective in its 2008 – 2010 Strategic Plan. A Deputy Director for Strategic Planning and Organizational Development has been appointed to oversee the implementation of this objective, as well as to ensure that the Department's training program meets the strategic needs of its workforce. The Department has drafted both a workforce and a succession plan that are currently undergoing internal review. It has identified those classifications within the Department with high percentages of employees aged 50 or over, who may be likely to retire in the next few years.

In addition, the Department has identified the following activities in its strategic plan for assisting the boards, bureaus, and divisions to effectively recruit and retain employees:

- Establishment of a Recruitment and Retention Office.
- Establishment of a Leadership Academy for Board Executive Officers, as well as for middle managers. The leadership training will be based on the values identified in the department's strategic plan.
- Establishment of employee retention programs such as a formal mentoring program; promotion of alternative schedules, telecommuting, and flexible work hours; and exploration of on-site child care.

- Development of a new employee survey and a formal exit interview process.
 - Development of a job rotation program.
5. Have you examined issues of salary compaction within DCA entities? How are you addressing them?

Yes, we have examined issues of salary compaction within the department and have addressed this challenge in a couple of our programs. In fact, in working with the Contractors State License Board and the Department of Personnel Administration we were able to help CSLB get a 4% increase last year for enforcement supervisors to remedy the difference in compensation with represented classifications.

6. Does your department and the individual boards and bureaus have workforce and employee succession plans in place?

As stated in Question 4, the department has drafted workforce and succession plans, which take into account the various job classifications used by the boards and bureaus. Some of the boards and bureaus, such as the Contractors State License Board, have begun drafting individual workforce plans. Some key elements of these plans include initial identification of classifications with large percentages of employees 50 years or older, who may be retiring in the near future; identification of competencies necessary for employee development, such as accountability, communication, ethics, and conflict resolution; and training strategies for leadership and supervisory development.

7. What has been the department's experience with Boomerang? Do you see this as a long-term staffing solution?

Boomerang is a wonderful program for the state in retaining the critical talent of our experienced staff members. The Department was provided access to Boomerang for the past several months and a growing number of managers have used it to find retired annuitants for projects and short-term job needs. We currently have 242 retired annuitants serving in our workforce.

Though critical, employment of retired annuitants is only one part of a long-term staffing solution. Boomerang is part of the state's HR Modernization Program, which is intended, through its six main goals, to improve the state's ability to recruit and retain employees. Retired annuitants are a valuable resource for project work and for short term filling of vacancies. Our experience with retired annuitants has been positive, as they are knowledgeable and bring a great deal of experience to their job. Interestingly, the Baby Boom generation is redefining retirement as many boomers are returning part time to the workplace and combining retirement with jobs. We are happy to capitalize on this trend.

Outreach

The Department of Consumer Affairs announced an upcoming campaign for consumers to highlight the benefits of licensure called Check the License. The campaign will highlight the benefits of licensure and will be supported by a new Web site, including examples of fake licenses, and a tip line staffed by DCA personnel. Part of the campaign will also be sting operations that target unlicensed activity. DCA will fund this project from assessments levied on each board and bureau. The exact formula has not been determined, but DCA representatives stated that boards with more license issues will be assessed a greater share. Contractors, for example, make up over three-quarters of the complaints.

The department also publishes an online magazine, "Consumer Connection," made available many new consumer publications, and updated and revised many of the boards' and bureaus' Web sites under its jurisdiction.

8. How does the department determine where to focus its outreach? How do you measure the results of your efforts?

The department uses a number of tools to determine where to do outreach. We do outreach based on the needs of consumers, demographics, community and private partnerships, and surveys.

In late 2005, the Department conducted a statewide phone survey to determine the level of awareness about the department and its services, as well as the kinds of consumer problems Californians consider the most serious and the best methods by which to reach them. The results serve as a baseline for the department's outreach and education methods, as well as a guide for focusing these efforts.

Survey respondents ranked identity theft as the most serious problem overall, followed by telephone, telemarketing, sweepstakes, or internet scams; false or misleading advertising; unsatisfactory construction or contractor work; real estate fraud; automobile problems, such as warranty, repair, or sales issues; and landlord-tenant disputes. The survey revealed that awareness of the department varied among populations. While seventy-six (76%) of the general population was aware of the department and rated it positively, awareness was significantly lower in underserved populations (57% among Spanish speakers, 68% among low-income respondents, and 69% among seniors).

The most favored passive communication methods preferred by all respondents were newspaper articles, radio announcements, and public access television. The general population preferred the toll-free telephone number, the DCA website, and the on-line customer complaint form as active communication methods. The most preferred active communication channel among underserved populations was the toll-free telephone number. We have also looked for other ways to reach consumers, such as partnering with our licensees to help educate consumers about our Department.

In 2009, the Department will conduct a follow-up survey to determine if awareness levels of the Department have increased. Additionally, the survey will allow us to see if we need to make changes to increase awareness in other program areas.

In addition to our Department wide efforts, several of our programs have undertaken similar surveys which target their profession. For example, in 2007, the Department conducted a similar phone survey for the Bureau of Automotive Repair (BAR). The results will serve as a baseline for public awareness for the bureau's forthcoming two-year media campaign, which will be launched in April 2008, as well as its outreach efforts. The survey revealed that the BAR is not particularly well known among consumers. Only 33% of all respondents said they had some knowledge about the bureau and its services. Awareness among the three underserved populations was consistent with the statewide sample. About a third (35%) of Spanish-speaking respondents, 40% of senior respondents, and 33% of low-income respondents reported having at least some knowledge of BAR and its services. At the end of its two-year media campaign, another survey will be conducted to determine if awareness levels have increased.

9. How will you determine which unlicensed activities to target?

During the months of March and April, staff will be conducting vigorous research efforts into many of the industries regulated by the department, such as construction, auto repair, the medical professions, electronic and appliance repair, and barbering and cosmetology. These research methods will include an in-depth review of on-line and print advertising; visits to businesses in areas of the state where unlicensed practice has been documented; a review of unlicensed complaints received by the department; and data gathering from a wide variety of regulatory entities, such as the statewide Underground Economy Task Force. These first-hand research methods are necessary because the department believes that it is not receiving the level of complaints it would if consumer and licensee awareness of the problem of unlicensed practice were raised. Staff will use the data gathered to help it target its activities.

While the Department intends for this effort to reach the range of professions we regulate, we recognize that the risk from unlicensed activity varies from one profession to another, and our effort is not dependent only upon the numbers of complaints or reports.

10. What is your assessment of how effectively DCA addresses the needs of non-English speaking consumers?

In response to the above survey results, and as part of its overall strategic planning efforts, the department has significantly increased its outreach and

media advertising efforts to non-English speaking consumers over the last four years, particularly to the Latino and Asian populations. These efforts include:

- A Language Line service through AT&T, which allows calls to the department's 800 number to be translated into 170 different languages.
- A significant purchase of ethnic media advertising for the Bureau of Automotive Repair's upcoming media campaign, which will be launched in April 2008. Thirty percent (30%) of the radio advertising has been purchased from Hispanic and Asian media outlets; 43% of television advertising has been purchased from Hispanic media outlets; 30% of outdoor (billboard and bus station) advertising will be in Spanish. For print advertising, during Year 1 of the campaign, 19% has been purchased from Asian print outlets, and 50% from Hispanic outlets. In Year 2, 28% will be purchased from Asian print outlets and 72% from Hispanic outlets.
- Distribution of 77 consumer publications in non-English languages.
- Participation in an increased number of ethnic events and festivals throughout the state, such as The Tet Festival, Hispanic Street Fairs, and the Bok Kai festival. This fiscal year, the department will participate by setting up information booths, talking to consumers, and distributing DCA brochures in 54 ethnic events, up from 11 such events last year.
- Notices on DCA's website in Tagalog, Chinese, Spanish, Russian, Korean, and Vietnamese that state that consumers speaking those languages can file a complaint with the department.
- Presentations during last fiscal year and this fiscal year to more than 1300 community-based organizations throughout the state, many of which serve non-English speaking communities.
- Diversity training for staff who conduct outreach activities.
- Regular distribution of information to ethnic newspapers, radio, and TV stations, through the New American Media Association.

In addition to these efforts, the department employs 85 certified bilingual staff throughout the state. Seventy-seven (77) speak Spanish, 5 speak Vietnamese, 1 speaks Farsi, 1 speaks Chinese/Mandarin, and 1 speaks Korean. These staff respond to written and verbal inquiries to the department, as well as correspondence and e-mails; and participate in outreach events to the non-English speaking community.

As noted in the survey results described in Question 8, Spanish-speaking populations had significantly lower awareness levels of both DCA and BAR than did other response groups. Both the department and the bureau will conduct follow-up consumer surveys to measure the effectiveness of their outreach and media campaign efforts.

11. While the Web site redesigns are more consumer-friendly and have a uniform look, the information presented is not standardized. For example, some present statistics on enforcement and individual licensees, and others do not at all. What information do you feel is most important for consumers to access on these Web sites? How do you ensure it is provided?

The Department is in the midst of the first step of converting all of our websites to the new format. The next step will involve reviewing content and recommending changes, such as looking at a standardized format for licensee lookup, and easily accessible and understood information on enforcement activity and consumer complaints.

Relationships with Boards and DCA's Role

DCA has minimal oversight of many boards, mostly limited to ministerial and administrative regulatory functions. The boards are designed to operate as independent bodies. However, DCA can have a role in providing public comment at Board meetings, investigating activities of boards, commenting on legislation affecting the boards, and sponsoring legislation.

12. You are bringing all of the boards to meet together. Please explain the purpose of this effort and the intended outcomes.

I am hopeful that this conference will accomplish several goals. First, I think it will provide a valuable opportunity for increased input from the public, including advocacy organizations. It will also provide an opportunity for a board to see how other boards operate and to identify common issues, as well as share best practices. It is also intended to provide professional development for board members.

13. Do you or your staff offer public comments at board meetings on issues of importance to consumers? Please provide examples of how DCA is proactively presenting the interests of consumers at board meetings and in board deliberations.

Department staff regularly participate in board meetings and offer comments on particular issues. We testified before the Board of Accountancy in support of maintaining public member majorities on their committees, and in support of increasing the number of public members on the Medical Board.

14. Section 153 of the Business and Professions Code gives DCA authority to hold boards and bureaus accountable? Have you exercised this authority? If so, please provide examples.

I believe it is beneficial for the Department, and myself as Director, to work cooperatively with our boards. While we have not exercised this specific authority, the Department does request monthly reports from the boards with specified information, such as current enforcement statistics. We have partnered with the boards to provide increased services to consumers, such as in emergency response situations, through the Rebuild Your Life campaign.

One of my priorities as Director has been to strengthen our relationship with the licensing boards. We have reorganized our Department, to provide increased emphasis on our boards and bureaus, and we recently developed a new strategic plan, with input from all of our programs.

15. For the bureaus your role is much more direct. What role do you, as the state's chief consumer advocate, have in working with the bureaus and do you believe you should be personally involved in major policy issues facing the bureaus? Please provide examples of where you have had a role in resolving bureau policy issues.

The Bureaus are very active in policy issues and, as Director, I am involved in ensuring that consumer protection is given the highest priority and that ample opportunity is given to the public to provide input and actively participate.

Examples:

Professional Fiduciaries Bureau

We have implemented legislation that took effect January 1, 2007, that required the licensure of a professional fiduciary by July 1, 2008. This involved establishing a working group for the development of regulations; implementation required the adoption of emergency regulations that specified the code of ethics, the educational requirements, application forms and fees, initial and annual reporting requirements; and development of an examination for licensure that was available to administer in February 2008. The Bureau also developed an application and licensing tracking system. To date, 110 applications have been received.

Bureau of Automotive Repair (BAR)

BAR had developed a new outreach campaign, which includes increased awareness of the Consumer Assistance Program. Additionally, BAR has adopted and implemented the low pressure fuel evaporative testing regulations and adopted and implemented new legislation/regulations to test vehicles at idle for visible smoke from the tailpipe and crankcase.

Cemetery and Funeral Bureau

We are sponsoring legislation this year to provide continued revenue to the Bureau.

Bureau of Security and Investigative Services

We have appointed the advisory committee required by Chapter 721 of the Statutes of 2007 (SB 666, Maldonado) to develop a training curriculum for Proprietary Private Security Officers (PSOs). The committee will develop a curriculum that features skills, courses, and a minimum number of hours of instruction appropriate to a proprietary private security officer's worksite or industry. The first meeting is scheduled for April. The regulations must be completed by January 1, 2009.

DCA Control of Former Board Functions

The Bureau for Private Postsecondary and Vocational Education (BPPVE) sunset July 2007, and AB 1525 (Cook), Chapter 67, Statutes of 2007, transferred many of the bureau's remaining functions to DCA. The department has the power

to enter into voluntary agreements with schools approved by the prior bureau and must handle student complaints.

DCA is also faced with the sunset of the Dental Board, Board of Vocational Nursing and Psychiatric Technicians, Board of Barbering and Cosmetology, and the Speech-Language Pathology and Audiology Board. Following sunset, these boards will become bureaus under DCA.

16. What DCA staff is allocated to handle the issues once handled by the BPPVE? How do those staff prioritize issues to be addressed?

Prior to the BPPVE's sunset, the Department hired special consultant, Joanne Wenzel to manage the closure of the Bureau and the day to day activities since the sunset. Ms. Wenzel is a former Education Administrator with the Bureau. Her responsibilities include processing the voluntary agreements, maintaining the former Bureau's web site, managing the payment of STRF claims, answering daily telephone and email inquiries, developing student brochures, working with students from schools that have closed and holding 19 workshops throughout California.

In addition, the Department has borrowed positions from other programs on a limited basis to support operations and relied on existing programs such as the Consumer Information Center (CIC) to respond to student complaints and inquiries.

To date the following activities have taken place based on the provisions of AB 1525 and SB 45 (Chapter 67 and 635, Statutes of 2007).

- Tendered voluntary agreements with schools that were approved as of June 30, 2007. By signing the agreements, these schools have agreed to comply with the law that was in existence as of June 30, 2007. Currently, 1685 prior approved or registered institutions have submitted a voluntary agreement, 109 prior approved schools have not and 22 new schools have submitted a voluntary agreement. The list of schools that have signed the voluntary agreement is on the former Bureau's web site.
- Paid 410 STRF claims for a total of \$4,182,948. 80 loans were forgiven, 63 claims were denied due to ineligibility and currently 24 claims are pending awaiting responses from the claimants. STRF claims currently are being processed as they are received for schools that close prior to June 30, 2007.
- During January and February, the Department hosted 19 workshops throughout California. Over 750 schools and participants attended. The workshops were an opportunity for the department to present information on the current law, compliance with the student protections from the previous law for schools that signed the voluntary agreement and what the Department and schools should be telling students about choosing a career, a school, financial aid and career placement. The first workshop was webcast and recorded and is available on the former Bureau's website.

- Developed a series of brochures for students and schools (to disseminate to students) on how to choose a career, a school, financial aid, and career placement. There is also a Student Bill of Rights and Code of Professional Standards for Private Postsecondary Schools. These brochures are available to order and download from the former Bureau's web site.
- Responded to approximately 155 complaint inquiries. The primary complaint has been a request for a refund of tuition (the former Bureau did not have the authority to order a refund). Other complaints/inquiries have included transcript requests, assistance for reinstatement after expulsion, delinquent student loans, school closure, allegations of fraud and non-jurisdictional inquiries.

17. When the Governor vetoed BPPVE legislation in 2006, he stated he wanted "meaningful protections for students." When State and Consumer Services Agency Secretary Rosario Marin was heard before The Rules Committee in January, 2007, she said resolving BPPVE'S problems was a high priority. Yet little progress has been made. What role are you playing in creating a more permanent solution to BPPVE problems? What is the status of BPPVE?

The Bureau closed on July 1, 2007. The provisions of AB 1525 and SB 45 (Chapter 67 and 635, Statutes of 2007) provide the direction and authority for the Department to operate in protecting students and regulating private postsecondary schools. The Department has been very active in implementing the provisions of the current statute as explained above.

Over the last year, the Administration and the Department have been involved in the negotiation of amendments to SB 823 and the introduction of AB 2746 (Niello) which is the Administration's bill to regulate private postsecondary schools.

Until the bureau is reestablished, I am concerned that student interests are not being protected. Under the current statute students in programs leading to licensure from an entity that requires the school to be approved by the BPPVE have until January 1, 2009 to complete their training. Schools that have teaching programs where the student must seek licensure from an entity that requires the school to be approved by the BPPVE must disclose to students that, at this point, they must complete programs by January 1, 2009, in order to qualify and sit for the licensure examination. This means that schools with programs that are longer than 8 months (psychology programs and Marriage, Family and Child Therapists) are not enrolling students because they cannot guarantee that upon graduation the student would qualify for licensure. This has limited student choices and diminished the student enrollment. Many of these schools are facing financial hardship.

Moreover, schools that require BPPVE approval in order to be approved by other regulatory bodies (paramedics) and were not approved prior to June 30, 2007, cannot open or operate legally. Schools that close without proper teach-out of

their students do not face any penalties and the students that were attending schools that close do not have the benefit of having someone from the BPPVE to come and explain their rights and responsibilities. Currently, the STRF fund is limited to funds already on deposit, and once these funds are exhausted no more student claims can be paid. In addition, there is no requirement prohibiting schools from destroying records. The BPPVE receives many requests from students on how to get copies of their transcripts from schools that have closed.

18. *The current Budget proposes to move the function of review of veterans' educational programs from BPPVE to DCA. What expertise does DCA staff have in the educational programs they would review? How will this review protect veterans?*

The California State Approving Agency (CA/SAA) is a functional unit within the Department of Consumer Affairs. The contract is with the US Department of Veterans Affairs (DVA). The DVA establishes the performance criteria that are required to meet contract requirements. The core functions of the program include the approval of programs, supervisory visits of schools including compliance visits, technical assistance, outreach, liaison, and contract compliance.

The employee qualifications standards for CA/SAA personnel approving and supervising education institutions are established in federal law and are as follows:

- An earned bachelor's degree with five years of related experience, or
- An earned master's degree with three years of related experience, or
- An earned doctorate degree with one year of related experience

In addition, an employee may supplement but not supplant the degree requirements with related experience.

As part of the contract, the Department is required to provide the list of employees and their qualifications. The CA/SAA is using the same personnel classifications that were used when it was part of the BPPVE. These classifications are: Education Administrator, Senior Education Specialist, and Education Specialist. When the BPPVE closed, only those senior employees in these classifications, who also met the federal qualification standards, were placed in this program.

The CA/SAA must follow the review process established by the DVA and it is their determination that this process protects veterans.

19. *How is the department preparing to assume responsibility of the sunsetting boards?*

Four boards will sunset on June 30, 2008: Dental Board, Board of Barbering and Cosmetology, Board of Vocational Nursing and Psychiatric Technicians, and the Speech-Language Pathology and Audiology Board. These programs will

become bureaus within the Department of Consumer Affairs. In accordance with Business and Professions Code section 101.1 (b)(1), the Department will succeed to and will be vested with all of the duties, powers, purposes, responsibilities and jurisdiction of the board and Executive Officer that is not otherwise repealed or made inoperative. To address this change, I assembled a management team to ensure a smooth transition, and this Sunset Team has been meeting regularly since January. Personally, I have taken the following actions:

- Contacted each of the boards and encouraged each member to continue their service as a member of the Advisory Board to the new bureau after July 1, 2008.
- Visited the Dental Board to talk about the sunset process with the staff and answer their questions.
- Since the exempt authority for the Executive Officer position is lost in the sunset process, I have submitted CEA packages to SPB and DPA to establish the Bureau Chief as a CEA. The CEA announcements were released on March 11, 2008. We cannot, of course, make appointments until SPB and DPA have approved these four new CEA positions.
- Met personally with each of the Executive Officers to discuss their options, which include applying for the new CEA position of Bureau Chief.

While the transition of a board to a bureau is unfamiliar territory for some, it is not foreign to the Department. It has occurred on several occasions in the past. The most recent occurrence involved the California State Athletic Commission, which was sunset for a six-month period. During that period of time, the Commission's responsibilities were carried out as a program under the Department. The program continued to operate and consumer protection was not compromised in any way. Just as the Director sought the advice of licensed professionals and the public on matters concerning boxing and the protection of boxers and consumers during the period the Commission was sunset, I will do the same in these cases.

State Board of Chiropractic Examiners

The State Board of Chiropractic Examiners was created by initiative in 1922. As such, it does not have the same DCA oversight as other boards and bureaus under the department.

The board has had some widely publicized incidents this year, including allegations of violations of the Brown Act, violations of due process for its employees, reduced enforcement, and faulty investigations.

20. What do you believe should be done to provide appropriate oversight and consumer protection in this area? What role do you play personally in monitoring this board? At what point do you as DCA director use your authority to improve the board's track record or ask for board member resignations?

In my role as DCA director, I do not have the authority to improve the board's track record or request a board member's resignation. However, my philosophy is helping out sister agencies when they ask for help. Approximately a year ago, the Chiropractic Board approached the department and asked that we provide

support services. Today, we have an agreement in place that gives them access to legal counsel, training, personnel and administrative services.

Similar to all licensing boards, the Board of Chiropractic Examiners should continue to be reviewed by the Joint Committee on Boards, Commissions, and Consumer Protection as scheduled. This provides the Legislature an opportunity to carefully review the board's consumer protection program and address any known policy issues. Secondly, the board should be required to submit annual workload reports to the Governor and Legislature to allow the continual examination of the Board's consumer protection efforts.

21. Your legal office provided an opinion on the controversial issue of manipulation under anesthesia. Why was this opinion provided?

The Board contracted with the Department for personnel, budget and legal services. As such, the Department assigned staff counsel to provide legal services to the board. The board requested staff counsel to provide a legal opinion on whether or not manipulation under anesthesia is within the scope of practice of a chiropractor. Staff counsel completed the assignment and submitted the opinion to the Board in November 2007.

22. Would you support placing the Board under DCA?

The Board has been working cooperatively with the Department, and we are providing them administrative support, such as personnel and legal services. It would be up to the voters to determine whether the Board should be placed under the Department, and I respect their right to make that decision. I think the most important thing is for the Board to have the resources it needs to carry out its functions.

23. Would you support codification of the Initiative Act in the B&P Code and giving the Governor and the Legislature the authority to amend the Act?

The Initiative Act was created in 1922 by the voters of California. The Initiative Act provides the right of chiropractors to practice their chosen profession and that right must be respected. Amendments to the Act must be made through a voter approved initiative, which is both costly and difficult, and it is up to the voters to determine whether the Governor and the Legislature should have this authority.

Medical Board of California

The Medical Board recently decided to end its Physician Diversion Program, which allowed doctors to continue practicing while undergoing treatment for substance abuse. This decision followed a 2005 report by an enforcement monitor and a 2007 report by the Bureau of State Audits, finding that the program was not fulfilling its mission of adequately protecting the public. The board has

arranged a transition program for current participants, but there is presently no system for new cases.

24. Should DCA actively participate in the creation of a new diversion plan? If so, what is your timetable? If not, how should the issue of physicians with substance abuse problems be addressed?

The department will work with our boards to monitor and audit such programs, but, more importantly, our role will be to facilitate and hold accountable a set of standards based on a department-wide policy for managing the rehabilitation of professionals and a re-entry process into the field. The framework will allow for implementation to be tailored to the different needs and considerations in order to have a program that best serves its purpose of ensuring consumer protection. My office will continue to work closely with the Medical Board as they transition from the current Diversion program to a model similar to our other health regulatory boards.

BOARD OF PAROLE HEARINGS

BOX 4036
MENTO, CA 95812-4036

March 19, 2008

The Honorable Senator Don Perata
Chairman
Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814

Dear Mr. Chairman:

I received your letter regarding the date and time of my upcoming confirmation hearing. I appreciate the opportunity to share my goals with you and the Senate Rules Committee for the position of Commissioner for the Board of Parole Hearings (BPH).

During my tenure, I hope to accomplish the following:

Appear at each and every hearing prepared by having in-depth level of knowledge of the content within the file in order to conduct fair and impartial lifer parole consideration hearings for each inmate that sits before the panel I chair. And to do so with no preconceived decision in mind.

To conduct these hearings in a manner that gives each participant an opportunity to effectively present the facts and factors of suitability within the time allowed for that hearing, and doing so in a minimally adversarial fashion.

To ensure the protection of each inmate's due process and ADA rights as stated in the Request for Accommodation (BPT Form 1073) or issue identified at the hearing that may impede their ability to participate.

To look for evidence with each inmate as to level of rehabilitation and being mindful of individual abilities to reach the recommendations set by previous panels.

To discern, via the factors of suitability set by Title 15, Sections 2281 and 2402, who of the inmates seated before me, are rehabilitated and pose no further threat to the citizens of California.

In addition, I will continue to assist by being an active participant in:

- Meeting the goals and objectives of the Board of Parole Hearings;
- Fostering positive relationships with system stakeholders within CDCR, California District Attorneys, Defense Counsel, Victims, Victims' Next of Kin and their advocates, Forensic Assessment Division Clinicians, Language Interpreters, and the general public;

Senate Rules Committee

MAR 18 2008

Appointments

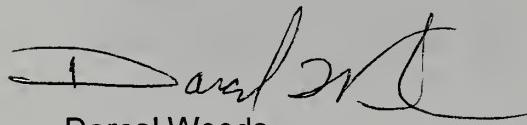
The Honorable Senator Don Perata
Chairman
Senate Rules Committee
Page 2

- Training, both provided by BPH and those offered by entities statewide and nationally, which can enhance my understanding of current trends and emerging policies and best practices.

Additionally, the Form 700 dated February 29, 2008, is enclosed for your review.

If there are any questions you or your staff would like to discuss, please contact me at (916) 445-1350.

Sincerely,



Darcel Woods
Commissioner
Board of Parole Hearings

Enclosure

**PAROLE CONSIDERATION HEARING INFORMATION
BY COMMISSIONER
FOR JANUARY 2007 THROUGH DECEMBER 2007***

Comm #	ID# 034	ID# 049	ID# 053	ID# 054	ID# 056	ID# 057	ID# 058	ID# 060	ID# 061	ID# 062	ID# 063	ID# 064	ID# 065	ID# 066	ID# 067	ID# 068	ID# 069**
Name	E. Wmns	Inglee	Gamer	Bryson	Biggers	Davis	Shelton	H-Ritter	Martinez	J.Eng	Poncabare	Kubochi	Prizmlich	Woods	Doyle	Sims	CDCR
Hearings***	108	304	525	544	527	548	527	28	516	638	97	461	398	313	65	21	167
Grants	7	16	16	15	14	3	7	0	4	12	1	8	12	10	4	0	0
Deny	73	226	286	370	391	397	371	18	329	388	54	315	257	209	41	14	0
1yr	26	108	122	79	141	175	92	3	125	109	20	102	105	78	16	7	0
2yrs	29	61	76	142	144	113	105	11	103	139	16	105	64	66	13	4	0
3yrs	9	27	38	59	52	38	49	1	37	79	7	50	32	30	9	1	0
4yrs	5	21	22	26	30	30	49	1	33	38	6	38	32	13	2	1	0
5yrs	4	9	28	64	24	41	76	2	31	23	5	20	24	22	1	1	0
Slips	23	65	38	49	103	113	60	3	49	42	13	41	31	40	8	0	0
Postpone	28	60	219	155	115	143	149	10	177	134	41	133	125	89	20	7	167
NA/Att	14	24	58	36	41	75	66	7	51	38	10	46	29	30	9	2	148
BPT	14	36	161	119	74	68	83	3	126	96	31	87	96	59	11	5	18

* As a result of on-going quality control efforts this summary reflects minor changes to data relating to past reports issued for individual months within this period.

** CDC (ID#999) does not conduct Consideration Hearings, it only approves postponements cases.

*** Number of Grants, Denials, Slips, and Postponements will not sum to the total number of hearings per commissioner due to other miscellaneous hearings not included in this table.

**PAROLE CONSIDERATION HEARING INFORMATION
BY COMMISSIONER
FOR JANUARY 2008**

Comm #	ID# 053	ID# 054	ID# 056	ID# 057	ID# 058	ID# 061	ID# 062	ID# 064	ID# 065	ID# 066	ID# 067	ID# 999*
Name	Garner	Bryson	Biggers	Davis	Shelton	Martinez	J.Eng	Kubochi	Prizmich	Woods	Doyle	CDCR
Hearings**	43	48	38	20	54	54	3	12	46	49	49	31
Grants	3	2	0	0	4	0	0	0	1	1	1	0
Deny	22	33	33	4	36	33	3	8	24	25	36	0
1yr	13	10	10	1	13	11	1	2	6	9	11	0
2yrs	6	12	15	3	9	12		5	11	11	17	0
3yrs	1	3	4	0	5	2	0	0	3	0	3	0
4yrs	1	1	2	0	4	6	0	1	4	3	4	0
5yrs	1	7	2	0	5	2	2	0	0	2	1	0
Stips	3	6	11	4	2	4	4	1	4	6	7	0
Postpone	18	13	5	16	14	21	0	4	20	22	12	31
l/Alt	0	6	1	0	8	5	0	3	7	7	5	12
BPH	18	7	4	16	6	16	0	1	13	15	7	19

* CDCR (ID#999) does not conduct Consideration Hearings, it only approves postponements.

** Number of Grants, Denials, Stips, and Postponements will not sum to the total number of hearings per commissioner due to other miscellaneous hearings not included in this tab

NOTE: Postponements for Commissioner Davis (ID# 057) may be elevated due to actions processed through BPH Headquarters.

**PAROLE CONSIDERATION HEARING INFORMATION
BY COMMISSIONER
FOR FEBRUARY 2008**

Comm #	ID# 053	ID# 054	ID# 056	ID# 057	ID# 058	ID# 061	ID# 062	ID# 065	ID# 066	ID# 067	ID# 069	ID# 999*
Name	Garner	Bryson	Biggers	Davis	Shelton	Martinez	J.Eng	Prizmich	Woods	Doyle	Anderson	CDCR
Hearings**	44	35	41	35	44	45	33	44	19	45	1	11
Grants	2	0	1	0	1	1	1	0	0	2	0	0
Deny	22	28	34	23	26	29	27	21	8	24	1	0
1yr	11	5	20	6	8	11	9	12	1	12	0	0
2yrs	6	9	6	10	3	9	14	6	5	7	0	0
3yrs	2	5	3	5	5	3	0	0	0	3	0	0
4yrs	1	3	3	2	6	2	4	1	1	2	1	0
5yrs	2	6	2	0	4	4	0	2	1	0	0	0
Slips	5	3	6	5	3	5	4	6	1	7	0	0
Postpone	19	7	5	11	16	14	4	23	10	19	0	11
I/Att	4	2	2	3	3	1	1	4	0	5	0	11
BPH	15	5	3	8	13	13	3	19	10	14	0	0

* CDCR (ID#999) does not conduct Consideration Hearings, it only approves postponements.

** Number of Grants, Denials, Slips, and Postponements will not sum to the total number of hearings per commissioner due to other miscellaneous hearings not included in this table.

NOTE: Postponements for Commissioner Davis (ID# 057) may be elevated due to actions processed through BPH Headquarters.

CALIFORNIA LEGISLATURE

MEMBERS

ROY ASHBURN

VICE-CHAIR

GILBERT CEDILLO

ROBERT DUTTON

ALEX PADILLA



GREGORY SCHMIDT
SECRETARY OF THE SENATE
NETTIE SABELHAUS
APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

December 19, 2007

Jesse H. Choper

Dear Mr. Choper:

The Senate Rules Committee will conduct a confirmation hearing on your appointment to the California Horse Racing Board on Wednesday, February 13, 2008. You are not required to appear, but we request that you respond in writing to the following questions. Please provide your responses by January 11, 2008.

We would also like to receive an updated Form 700, Statement of Economic Interest, by January 11th.

Goals

1. *Please provide a brief statement of your goals. What do you hope to accomplish during your term on the Horse Racing Board? How will you measure your success?*

Horse Racing Industry

Gambling is a growing industry in California with about \$13 billion in gross wagering. However, the horse racing industry is not matching the rest of the gaming industry with gross wagering growing slightly from \$3.58 billion in 1997 to \$4.26 billion in 2006. Advanced deposit wagering and satellite wagering have helped keep revenue steady.

Furthermore, attendance at racetracks has dropped precipitously, from 10.9 million in 1997 to 2.9 million in 2006. There are seven racetracks in California and nine county fairs that conduct horse racing. Bay Meadows, one of the seven horse racing tracks, will close at the end of August 2008. Last year the board created the Strategic Planning Committee to analyze the horse racing industry, which has been said to be at a tipping

point. Larger purses at out-of-state racetracks have lured owners and their horses to other venues that used to run in California.

2. *How do you assess the future of horse racing in California? Is its financial future dependent on its ability to compete with gaming competitors?*
3. *What steps, if any, would you recommend taking to increase attendance at racetracks? What role should marketing play in the effort to increase attendance and revenues?*
4. *What role does horse racing at county fairs play in the future of horse racing in California?*
5. *What is the board's role in addressing future track closures? Should the number of racing days be reduced, or should they be divided up among the remaining tracks?*

Conflict of Interest

There have been legislative proposals that sought to limit members of the board who have financial interests in the horse racing industry. In 2005 the board said it would write its own conflict-of-interest rules. Several states, such as New York, New Jersey, Illinois, Texas, Florida, and Louisiana, prohibit their horse racing officials from having any financial interest in the business.

6. *Has the board developed its own conflict-of-interest code? What is the status of this matter?*

Gambling

In an August 2006 report, the Office of Problem and Pathological Gambling, administered by the Department of Alcohol and Drug Programs, said that there were approximately 300,000 pathological gamblers and another 400,000 problem gamblers in California. The study found that problem gamblers are more likely than other past-year gamblers to prefer sports and track betting.

7. *How is the board addressing problem gambling?*
8. *Besides the referral to the Office of Problem Gambling that is on the board's Web page, does the board provide any other information or referral information for problem gamblers?*

Synthetic Tracks

The board has decided to require horse racing tracks with meets of longer than four weeks to install a synthetic material on their horse racing tracks for safety reasons. Evidence suggests that damage to horses can decline up to 85 percent with the use of synthetic tracks. While synthetic tracks also benefit jockeys who fall with the horses, concern has been raised by the Jockeys Guild over the long-term health effects of jockeys breathing this material, which is composed of plastics and rubbers.

Earlier this month the president of the Santa Anita Racetrack called its newly installed synthetic track a nightmare because of severe drainage problems.

9. *What has been the experience, to date, in California with synthetic tracks? What levels of reduction in horse fatalities and jockey injuries has been experienced?*
10. *Has the board undertaken a study of the possible long-term health effects of jockeys inhaling the material from synthetic tracks?*
11. *Are the problems with the synthetic track at Santa Anita a problem with the synthetic material or with its installation?*

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,



DON PERATA

DP:KW

cc: California Horse Racing Board

JESSE H. CHOPER
Earl Warren Professor of Public Law
University of California Law School
Berkeley, CA 94720-7200
Phone: 510-642-0339
FAX: 510-643-2673
EMAIL CHOPERJ@LAW.BERKELEY.EDU

January 9, 2008

Response of Jesse H. Choper to Questions Regarding
California Horse Racing Board

1. Stated generally, I have two goals:
 - A. To address the wide range of issues that come before the CHRB from the perspective of a racing fan (more specifically, a bettor) for nearly forty years.
 - B. To deepen my understanding of the large number of very difficult problems facing the horse racing industry and to apply an experienced and unbiased judgment in helping to solve them.
2. I "assess the future of horse racing in California" as extremely challenging, and definitely believe that its financial future depends "on its ability to compete with gaming competitors."
3. I think it is important that steps be taken, through "marketing" (defined as broadly as possible) to attract younger people, including families, to live racing at the tracks. Some of these people will undoubtedly become serious handicappers and bettors. But their attendance is important even if they never wager very much. Many major bettors will come to the track only occasionally and continue to bet through one of a number of off-track vehicles. But those who attend to spend an afternoon or evening at the races because they find it to be an enjoyable sporting event will provide an audience that will permit live racing to flourish rather than ending up with a couple of tracks in major cities that provide the only actual races to bet.

Senate Rules Committee

4. I think that the people who attend horse racing at county fairs fall directly into the category of potential new fans described above that is greatly needed for horse racing's successful future.
5. There appears to be a strong chance that both Bay Meadows and Hollywood Park may close within the next several years. If either does so, all efforts should be made to avoid reducing the number of racing days. It is important that the CHRB do all it can to facilitate the plans of existing tracks (Fairplex, Pleasanton, and Sacramento have expressed interest) to improve their facilities in order to become major venues for thoroughbred racing. If one or more of those tracks succeed, the question of how many racing days should be assigned to existing tracks, and how many to the newly expanded ones, requires careful consideration.
6. A revised conflict of interest policy has recently been adopted. I also understand that a draft of a Commissioners' Manual should be ready for review early this year. Finally, I believe that a rule prohibiting all racing officials from having "any financial interest" in the industry (whatever that term means) would be most unwise as it would exclude those persons with the greatest knowledge and experience concerning the problems facing the industry.
7. Although the issue of problem gambling has not been discussed during my eight months on the CHRB, I think that the August 2006 Report's conclusion that the problem has increased in respect to horse racing should be reviewed and action for dealing with this should be explored.
8. I have noted that at least some Racing Programs (e.g. opening day at Del Mar) have an announcement headed "Responsible Gambling" and provide a phone number to readers who have, or know of someone with, a gambling problem. I believe that the CHRB should consider requiring an announcement of this kind to be prominently displayed in all programs and at the tracks, etc.

9. Although problems have arisen at Del Mar (differences in track consistency between morning and afternoon) and Santa Anita (drainage), the overall reaction to the four synthetic tracks that have been installed in California has been very positive. The experience to date at all of them has been a major reduction of horse fatalities (and, I would imagine, jockey injuries, although I have not seen statistics on that). In addition, the number of horses racing each day has increased, most markedly in Northern California (my area), with new racing stables coming to California because of the safer racing surfaces. Finally, I understand that the handle has increased at every track following installation of the synthetic surface.
10. I was not a member of the CHRB at the time that the synthetic tracks were mandated. But I understand that studies addressing the issue of any possible long-term health effects of jockeys inhaling the material were fully considered.
11. As of this date, as I understand it, the issue of whether the synthetic track at Santa Anita is a problem because of the material or because of its installation is unresolved. In any event, the CHRB must do all that needs to be done to both ameliorate and ultimately remedy the serious situation that has arisen.

Goals

1. Please provide a brief statement of your goals. What do you hope to accomplish during your term on the horse racing board? How will you measure your success?

I view success more as a journey than a destination. Horse racing is experiencing many challenges right now -- lack of profitability for the average horse owner/breeder/trainer, competing land uses for many of the current racetracks, an aging fan base, lack of media attention, competing gambling options, etc. CHRB's main role is to insure the high integrity of the sport and its participants, but I want to help promote the sport and business overall and urge all the stakeholders to work together to make improvements that will keep horse racing on a high plane and revitalize interest in it.

My goal in staying on the board is to provide continuity and to be able to urge all the disparate interests to better work together instead of getting into so many senseless fights. We also need to bring on board a new Executive Director, and solidify our existing staff and encourage professionalism at all levels of the organization. I want to stay around to support Chairman Richard Shapiro as he puts enormous time and energy into his job and it is enjoyable to work with him.

Horse Racing Industry

2. How do you assess the future of horse racing in California? Is its financial future dependent on its ability to compete with gaming competitors?

I think racing in California has a future, it is just a matter of if it can be one that is financially viable or not. There will always be a desire for folks to race horses: that goes back thousands of years. The problem now is that costs have far exceeded revenues and the overall fan base has changed. I think racing provides an intellectual challenge wherein on a pari mutual basis every player can test their insight into a given race vs. everyone else's. We need to better sell the fun and excitement of that challenge and greatly widen our market. I think that properly managed, that can happen. Horse racing is the only gambling opportunity available in the home. That is a tremendous opportunity. We have only scratched the surface of Internet Wagering, and it can be racing's salvation.

While many states have been able to greatly supplement purses with revenues from non-related gaming such as slots, I don't think this is a good long-term solution. I am fearful that unless racing itself can be the motor driving the financial model that other revenue sources could be easily diverted elsewhere.

3. What steps, if any, would you recommend taking to increase attendance at racetracks? What role should marketing play in the effort to increase attendance and revenues?

Senate Rules Committee

JAN 11 2008

Note that the attendance figures listed in Senator's December 19th letter are incorrect. In 1997 the total attendance at California racetracks and intrastate wagering facilities was 10,983,911 with 6,280,037 at simulcast facilities and 4,703,874 at live racetracks.

Our updated attendance total for 2006 was 8,162,521 with 4,625,521 off-track (CA simulcast facilities) and 3,537,000 at live racetracks, thus about 75% of 10 years earlier, but not the 25% noted.

The stalemates and declines we are seeing in on track attendance are disconcerting. Lots of things have been tried to reverse them, few successfully. Somehow we need to get potential fans engaged to want to be physically there to see a given horse, jockey, trainer, owner, race or something that creates their individual magnet. Free admission, better customer service, even better signage, etc. all have been mentioned and may help, but still we need the track to be more of a place where people want to go with friends to have fun. There have to be a lot of baby boomers out there looking for something to do.

Marketing is part of the equation, but it more than just marketing.

4. What role does horse racing at county fairs play in the future of horse racing in California?

I have always been a big supporter of the California Fair system, and agree that one of the purposes of horse racing law is to support the network of California fairs. The first race I ever attended was at the Big Fresno Fair. The Fair experience can get future fans inoculated with the excitement of racing. Fairs are generally on land that is dedicated to Fair uses and less likely to be developed for other things. Still, the racing element at the Fairs must make sense and be a popular attraction of the area and work hard to promote the overall sport and attract new fans. Particularly in Northern California as Bay Meadows closes, there is an immediate need for probably Alameda County Fair or Cal Expo to spend some money on their facilities for track upgrades and more stabling, and also create a spot on the overall racing calendar for dates in addition to their normal Fair dates. This is a cost effective way to insure that more than just one track (Golden Gate Fields) can serve the Bay Area/Northern California for both racing and year around training.

5. What is the board's role in addressing future track closures? Should the number of racing days be reduced, or should they be divided up among the remaining tracks?

The board should encourage an economic climate that discourages any track from closing. We need to realize that privately owned tracks do have options as to how they can use their property. A challenge the board has now is how best to reconcile the need for future planning and continuity of top scale racing with any given property owner's indecisiveness on their commitment to operate well into the future. I think

racing dates need to be allocated based on the total best interest of all the racing stakeholders--- horsemen, tracks, fans, the people employed in the many jobs racing entails both off and on track, the State, etc. It may take at least 2 or 3 years to find a suitable replacement for any track that decides to suspend operations. The CHRB needs to figure out some sort of defined policy that enables future planning, but forces no existing track out of business that will commit to racing some prescribed amount of time into the future. I think it should be an ever green type of arrangement wherein a track agrees to stay in place for at least a couple of years into the future to get a license each year. There could be liquidated damages paid if a track breached their agreement, but what really needs to happen is a spirit of cooperation within the industry to assure a smooth transition.

Conflict of Interest

6. Has the board developed its own conflict of interest code? What is the status of this matter?

Yes--we have a detailed conflict of interest policy and it is available for review. Each commissioner has signed an acknowledgement of the policy and the board received training on it last year.

Gambling

7. How is the board addressing problem gambling?

The board does take problem gambling seriously, although I feel it is not as much of an issue in horse racing as it is in other types of gambling. Help lines are available both at operating tracks and satellites as well as on the ADW websites. I recall a small % of ADW wagering goes to a fund to aid problem gambling help groups.

8. Besides the referral to the Office of Problem Gambling that is on the board's Web page, does the board provide any other information or referral information for problem gamblers?

All track programs, etc. list references on help for problem gamblers. There is some money from racing wagering channeled into the fund that helps on this issue.

Synthetic Tracks

9. What has been the experience to date, in California with synthetic tracks? What levels of reduction in horse fatalities and jockey injuries has been experienced?

I feel the board decision to install synthetic tracks at California racetracks racing over 4 weeks a year led a national effort to better focus on horse and track safety. Horse fatalities and jockey injuries are both down. Detailed information is available. We all

realize that synthetic tracks are not a silver bullet, but they sure are an idea whose time has arrived. Not all synthetic tracks are alike, and we are on a learning curve to figure out what works best. The concept is sound.



Synthetic Surfaces
-Mid-Atlantic TB.doc

Here is an article that outlines the issues.

10. Has the board undertaken a study of the possible long term health effects of jockeys inhaling the material from synthetic tracks?

Yes--The board itself has not commissioned a study, but there are detailed studies on this and it does not appear to be an issue. The studies are available for review. Let me know if anyone would like them.

11. Are the problems with the synthetic track at Santa Anita a problem with the synthetic material or with its installation?

There are serious issues with the Cushion track at Santa Anita, but they are working hard to rectify the problems. It appears that the mix in place right now at Santa Anita is not draining properly when rains occur and this has made the track unsuitable for racing. I am not sure what the answers are, but know tremendous efforts in time and money are being made to decide what to do. We will know more in the next few days.

586-R

Additional copies of this publication may be purchased for \$6.25 per copy
(includes shipping and handling) **plus current California sales tax.**

Senate Publications & Flags
1020 N Street, Room B-53
Sacramento, CA 95814
(916) 651-1538

Make checks or money orders payable to **SENATE RULES COMMITTEE**.
Credit cards not accepted.
Please include stock number 586-R when ordering.



